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POLITICAL PARTICIPATION OF FOREIGNERS
AS AN INSTRUMENT OF INTEGRATION
IN THE REPUBLIC OF POLAND,
THE FEDERAL REPUBLIC OF GERMANY
AND THE UNITED KINGDOM



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Table of Contents

Introduction.....	7
1. Subjective and objective scope	15
1.1. Foreigner.....	15
1.2. Integration.....	18
1.3. Political participation and representation of foreigners.....	28
2. Legal conditions for political participation.....	34
2.1. International conditions for political participation of foreigners.....	34
2.2. Political rights of foreigners at the European level	35
3. Political participation of foreigners in Poland	43
3.1. Integration policy in Poland.....	43
3.2. Political rights of foreigners in Poland	49
3.3. Participation of foreigners at a local level	63
4. Political participation of foreigners in the Federal Republic of Germany	67
4.1. Integration policy in the Federal Republic of Germany	67
4.2. Political rights of foreigners in the Federal Republic of Germany	76
4.3. Participation of foreigners at the local level	82

5. Political integration in the United Kingdom.....	93
5.1. Integration policy in the United Kingdom.....	93
5.2. Political rights of foreigners in the United Kingdom	101
5.3. Local integration policy in the United Kingdom.....	109
Final remarks	117
Bibliography	121
Books	121
Articles.....	123
Original documents.....	127
Court decisions	129
Internet sources.....	129

INTRODUCTION

Free movement of foreigners between Poland and other countries is becoming more and more common after Poland's accession to the European Union and the rightful accession to the Schengen Area. Due to various reasons for the movement, different nationality hence diversified legal status of foreigners, it can be stated that foreigners do not form a homogeneous group. It needs to be emphasized that more frequently Poland is happening to be the country of destination for foreigners, where they want or are forced to stay for a longer period of time. Nowadays more and more the EU member states face the problem of increasing number of immigrants. The states, which not long ago, described themselves as "multikulti" (e.g. Germany), which meant multiculturalism and coexistence of different nationalities, now struggle with growing social discontent both of their own citizens who perceive foreigners as a threat for domestic labour market and for the citizens themselves and of foreigners who feel marginalised socially. Integration actions targeted at immigrants must be long-term and constitute a coherent policy with the consideration of national diversities and legal status of their residence on the territory of the receiving state. Ignoring the importance of the issue in the states of so-called "young" European Union (undoubtedly also Poland) may result in the problems which the countries like the Federal Republic of Germany and France are confronted with.

The problem of immigrants' integration is also emphasized by the Commission of the European Communities in the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union (Brussels 01.09.2005, COM (2005) 389 final).

In 2005 the Ministry of Social Policy adopted „Proposals of Actions Aimed at Establishing a Comprehensive Immigrant Integration Policy in Poland”. It was emphasized in this document that the integration process comprises several aspects.

1. **Political aspect.** Mainstreaming integration policy in the context of other policies such as: the asylum and immigration policy, non-discrimination, health, social, employment, education policies etc. By defining interdependencies, connections, mutual influence and interaction of these policies, the directions for the integration policy development and its significance are indicated.
2. **Legal aspect.** Development of legal provisions for the implementation of integration policy. Provisions which provide for foreigners’ access to rights and obligations in particular spheres of social functioning on equal terms with Polish citizens are the provisions which allow for integration.
3. **Institutional aspect.** Identification of institutions responsible for the implementation of integration activities towards foreigners. The division of competence and the scope of tasks, establishment of institutions responsible for integration activities.
4. **Substantive aspect.** Dissemination of knowledge on the phenomenon, related processes, and areas involved in and connected with the integration process. This aspect includes defining the groups which should be covered with integration activities, and the types of these activities towards individual groups.

This publication focuses on the **legal aspect** taking into consideration also the political aspect understood as forming mutual policies in the areas of integration activities. The Migration Policy Integration Index (MIPEX), which among others refers to the legal aspect, is a reference guide and a fully interactive tool allowing for assessing, comparing and improving integration policy.

In the framework of MIPEX, integration policies in all member states of the EU, Norway, Switzerland, Canada and the United States

have been evaluated. By means of over 200 policy indicators, the Index presents a rich, multi-dimensional picture of immigrants' status and their opportunities to participate in society fully. The first edition of MIPEX was launched in 2004, the second in 2007, the third and the newest one was published in February 2011. MIPEX covers seven legal areas which shape the migrant's way to full residence, and after some modifications they may constitute indicators for legal instruments of integration:

1. Legalization of foreigners' residence;
2. Foreigners' access to the labour market;
3. Public (political) participation of foreigners;
4. Social assistance provided for foreigners (including mainly individual programmes of integration of foreigners);
5. Education of foreigners;
6. Anti-discrimination of foreigners;
7. Obtaining the citizenship by foreigners.

Each of the aforementioned areas may be subject to the research on foreigners' integration.

In my publication I would like to focus on political participation of foreigners due to the fact that as the aforementioned MIPEX index presents, Poland is one of the few states of the EU where foreigners are not provided with proper political rights. Thus some questions may be posed. Are any standards of political involvement of foreigners in the life of the receiving country? Is it possible to define precisely what a due proper level of involvement is? The works on this publication were launched soon after the local government and parliamentary elections, which allows for gathering up-to-date data concerning actual level of foreigners' involvement.

My research does not include the area of legalisation of the residence and the area of access to the labour market now. Both areas are particularly important from the perspective of integration process and its significance is also emphasized in the document: Migration Policy of Poland – the current state of play and the further actions”.

The document mainly emphasizes the necessity of simplification and uniformity of procedures concerning residence and work permits, specification which groups of immigrants are desired and which are not. The report diagnoses the need for changes with reference to residence and obtaining work permits and soon it will constitute the basis for amendments of respective legal acts like the Act on Foreigners. Therefore, it will be more competent to verify in some time how the content of the document affected the actual legislative activities of the legislator. The other aspects of legal integration of foreigners (social assistance, education, anti-discrimination, obtaining citizenship) were mentioned in the document however they were received not much attention therefore deeper research and evaluation is needed. Nevertheless, these areas are complex enough to be discussed in separate publications.

Simultaneously the Polish legal solutions on integration should be compared to the legal solutions which are binding at the European Union level and in these member states of the European Union which have more experience in the area of foreigners' integration. The states whose legal solutions will be examined in the legal comparative studies are (apart from Poland): the Federal Republic of Germany, the United Kingdom. The aforementioned states are in the lead taking into consideration the number of foreigners residing in the state and where at the same time the correctness and effectiveness of the integration process is hotly debated in the media.¹ This selection is also justified by the fact that the aforementioned countries are multicultural and no other countries, due to some historical events, have experienced to that extent the presence of foreigners in their internal legal order.

MIPEX examined 31 European countries. The MIPEX report referring to the issue of political participation indicates that most immigrants have few opportunities to inform and improve the policies that affect them daily. 11 countries, mostly in Central Europe, still have laws denying immigrants basic political liberties. In Europe, non-

1 Foreign citizens made up 6.4% of the EU27 population, Eurostat newsrelease, 129/2010, 7.9.2010, http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-07092010-AP/EN/3-07092010-AP-EN.PDF, [online 21.06.2012]

EU nationals can stand as municipal candidates in 13 of the countries surveyed, vote locally in 19, regionally in 7, and nationally in 2 (Portugal, the United Kingdom). Consultative bodies exist at local level in 15 countries and at national level in 11. They only provide halfway meaningful opportunities for immigrants to improve policies. About half of the countries fund immigrants' political activities, while a third inform them of political rights. Opening political and civil rights is the sign of a confident country of immigration. Established and new countries of immigration diverge significantly. Immigrants enjoy nearly none of these rights in Central Europe, the Baltics, Cyprus and Malta. Only Ireland and Portugal have opened as many political opportunities as leading countries in the Nordics and Northwest Europe. Established countries of immigration with less favourable frameworks, especially on voting rights, need either constitutional changes (Austria, Denmark, Italy, Spain) or a greater political will (Canada, France, the United Kingdom, the United States).

Norway was classified the highest in the ranking. This country as a positive model example is characterised by a wide range of opportunities provided for foreigners to participate in political life. Newcomers enjoy the same civil liberties as nationals. An immigrant can vote and stand in local elections, and enjoy basic political liberties, just like nationals, after a limited number of years of legal residence. S/he can also vote in regional elections. S/he can be elected and even lead a strong and independent immigrant consultative body in his/ her community, region, or for the whole country. The state informs his/ her of his/her political rights and supports the emergence of immigrant civil society. The Federal Republic of Germany was classified as the eighth whereas the United Kingdom as the thirteenth.

The worst case is when an immigrant cannot contribute to the political decisions that most affect him/ her in the city, region, and country where s/he lives. The state restricts his/her basic civil rights. S/he cannot found a political association, join a party, or work as a journalist. Only nationals (and, in the EU member states, the EU nationals) have the chance to vote. S/he lives in a city where the government does not even consult with immigrants. The state does not implement any policies to encourage him/her to participate in

democratic life. Associations representing his/her interests cannot count on state funding. Romania was classified as the last one whereas Poland and the Czech Republic were penultimate.

A general tendency on increasing political participation is evaluated in the conclusion of the report. Immigrants' political opportunities are not getting much better. The only country to make significant progress was Greece which reformed nationality law and opened many local political opportunities. This example illustrates the MIPEX finding that consultative bodies are not a substitute for voting rights. Countries extending voting rights are more likely to create strong consultative bodies. Political participation is becoming a part of integration strategies. Consultative bodies and voting rights first emerged in the 1970s and are regularly debated across Europe and increasingly North America. The major reason that MIPEX scores improve is not directly because of the EU law or the Council of Europe Convention n.144.² National and European courts help secure basic civil rights (Austria, Spain). New countries of immigration have renewed interest in both consultative bodies (France, Ireland, Italy, Spain, Portugal) and some voting rights (the Czech Republic, Estonia, Lithuania, Switzerland, Luxembourg, Slovakia, Belgium, Germany). MIPEX results suggest that consultative bodies come (Luxemburg, Portugal) and go (Belgium, Denmark) usually when governments are willing to listen. Voting rights are here to stay: hard to obtain, but even harder to revoke.³

It can also be stated after Odmalm that the increased level of identification of foreigners with the receiving country is directly reflected in the increased level of political engagement in public life and integration. The main hypothesis refers to the problem that, much like the concept of identity, identification should not be seen as a process with a clear beginning and an end but rather as an ongoing process in which these identification levels fluctuate and differ both temporally as well as spatially. The finding should hence not be seen as the final proof of Iranian, Chilean, Surinamese identification levels, both rather

2 Convention on the Participation of Foreigners in Public Life at Local Level, Strasbourg, 5.2.1992, ETS No. 144.

3 <http://www.mipex.eu/political-participation>, [online: 1.8.2012].

as indicative signs of where we can locate these levels as a result of time to stay, exposure to political direction towards immigrant groups in combination with internal and external definition of identification.⁴

The aforementioned document of the Ministry of Social Policy expresses the need for coherent and long-term actions in this respect. Foreigners are not a homogenous group not only because of various nationalities but also due to a diverse legal status of residence on the territory of the receiving state.

The research for all groups of foreigners should be carried out in several areas. One of the areas is political participation, the subject matter of the present publication. **Political participation** is understood as the possibility of taking part in public life (understood broadly) and performing authority on the territory of the receiving state. The possibility of foreigners' participation in public life, from the perspective of active and passive electoral rights, both at national and local government level should be examined.

Subsequent chapters of the publication are devoted to the analysis of possibility of holding offices by foreigners at national and local government levels in Poland, the Federal Republic of Germany and the United Kingdom. The legal grounds enabling foreigners to have access to public posts should be examined in the aforementioned states. The introductory chapter includes basic notions exploited in the book like 'foreigner', 'integration'. International and European legal grounds for formation of integration policies are also provided. Each chapter is devoted to one of the aforementioned states.

A legal and comparative study was exploited in the publication. The data for the analysis were collected during two foreign search queries in the State Library in Berlin (*Staatsbibliothek zu Berlin*) and the Oxford Library. The resources available online have also been used in the publication. The monograph is an outcome of the research conducted in the years 2011–2012 in the Department of Administrative Law, at the Faculty of Law, the University of Białystok within the

4 P. Odmalm, *Migration Policies and Political Participation. Inclusion or Intrusion in Western Europe?*, New York, 2005, p. 154.

programme “Research of Young Scientists”. The legislation in force cited in the publication as at 30 August 2012.

1. SUBJECTIVE AND OBJECTIVE SCOPE

1.1. Foreigner

Numerous scholars perceive the notion of 'foreigner' within the meaning of international law i.e. a person of foreign citizenship (usually of one, but could also be of two or more). Stateless persons are also classified in this category.¹ The definition stipulates the group of subjects that refer the scope of the notion: persons of foreign citizenship (even if it is not the only citizenship) and the stateless.

The fact that a foreigner lacks possessing citizenship of a particular state is emphasized in other definitions. In Klafkowski's opinion, a foreigner is a natural person who is not a citizen of the state on whose territory s/he staying². The fact that a particular person is staying in a foreign state is emphasized in this definition. According to Gilas, a foreigner is everybody who is not a citizen of a particular state.³

On the other hand, Białocerkiewicz remarks that both in the literature of international law and domestic law pejorative definitions prevail i.e. a foreigner is a person who staying on the territory of a particular state or while going through the territory does not possess the citizenship of this particular state⁴. Białocerkiewicz is a proponent of the definition of foreigner by pejorative criterion as this criterion allows to include persons with defective citizenship (refugees and the stateless) and persons without established citizenship in the group of foreigners⁵.

1 R. Bierzanek, J. Symonides, *Prawo międzynarodowe publiczne*, Warszawa, 1994, p. 247.

2 A. Klafkowski, *Prawo międzynarodowe publiczne*, Warszawa, 1979, p. 270.

3 *Encyklopedia prawa i stosunków międzynarodowych*, Warszawa, 1976, p. 54.

4 J. Białocerkiewicz, *Nowe polskie prawo o cudzoziemcach*, Toruń, 2003, p. 18.

5 J. Białocerkiewicz, *Status prawny cudzoziemców w świetle standardów międzynarodowych*, Toruń, 199, p. 445.

The notion of 'foreigner' is also stipulated in the Polish legal system. According to the Act on Foreigners, a foreigner is any person who is not holding Polish citizenship⁶. The German legal system understands the notion of foreigner in a similar way⁷. The problem how to define a foreigner and a national of a particular country is also undertaken in the legal systems of other states. For example, after the United Kingdom's access to the European Union, in the British Parliament the discussion was initiated on the definition of the British citizenship and consequently the indications who, not possessing the aforementioned citizenship, would be considered as a foreigner. The specificity of these types of considerations is grounded in the fact that the United Kingdom is a country of rich colonial traditions, which affected the multiplicity of relations in the area of establishing citizenship and considering somebody as a foreigner. Two cases of recognizing somebody a British citizen were pointed out:

1. Persons who are citizens of the United Kingdom and Colonies or British subjects not possessing that citizenship or the citizenship of any other Commonwealth country or territory, who, in either case, have the right to abode in the United Kingdom, and are therefore exempt from UK immigration control;
2. Persons who are citizens of the UK and Colonies by birth or by registration or naturalization in Gibraltar, or whose father was born, register or naturalized;⁸

All the others are considered foreigners.

According to Jagielski, in administrative regulations which mainly concern the principles of entry, departure and residence of foreigners, this category is defined by referring to the criterion of citizenship i.e. either possessing it or not.⁹

In Jagielski's opinion the notion of foreigner is relatively clear, and its content defined in legal language does not diverge much from its

6 Ust. 13.6.2003 o cudzoziemcach, Dz.U. 2011, Nr 264, poz. 1573.

7 P. Odmalm, *op. cit.*, p. 34.

8 P. Odmalm, *op. cit.*, p. 69.

9 J. Jagielski, *Status prawny cudzoziemca w Polsce (problematyka administracyjno-prawna)*, Warszawa, 1997, p. 8.

meaning in colloquial language. It can be stated that a foreigner may be identified by various criteria (all of them treated as equally important). These criteria encompass, for example, citizenship, permanent abode or nationality.¹⁰

Regardless of the fact whether we examine the legality of foreigner's residence or his/her legal status in the receiving country it needs to be noted that the basic criterion is the fact that such a person does not possess citizenship of a particular country.

Diverse categories of foreigners may be distinguished in the doctrine. Three categories of foreigners can be established (after Białocerkiwicz) The first category comprises foreigners who may be granted the right to abode under the provisions of domestic law or international agreement (like employed, self-employed, students, repatriates, retired persons). The second category includes foreigners who are protected by privileges and immunities under the acts or agreements and commonly established international customs (the members of diplomatic and consular personnel and their family members, employees of international organizations). The third category contains members of armed forces and their family members¹¹. Taking into consideration the present publication, differentiation due to the legality of foreigner's residence and the foreigners' country of origin also seems to be important as foreigners who come from the European Union will be treated differently from the third-country citizens. It needs to be emphasized that mechanisms which prompt political participation of foreigners and their integration are aimed at people who legally stay on the territory of the receiving state and therefore the present publication focuses on the foreigners whose status of residence has been legalized and legally explicitly established.

In the era of intensified social mobility, when one day we can live in one country and the following day in another country, all legal regulations on the possibility of mobility between countries are

10 A. Szklanna, *Ochrona prawna cudzoziemca w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka*, Warszawa, 2010, p. 45.

11 J. Białocerkiwicz, *Prawo międzynarodowe publiczne. Zarys wykładu*, Olsztyn, 2005, pp. 276–277.

of key importance. The actions which aim at integrating foreigners are also crucial. The notion of 'integration' may be interpreted in a multidimensional way and may have a different context both social and legal.

1.2. Integration

Integration in a broad, sociological meaning generally refers to the method (and effectiveness) of functioning of social systems and the quality of bonds between its subsequent elements. It can be perceived as „the state of organisation, fusion, harmonisation of diverse elements creating social community; the state which refers to the area of norms, values, actions and communication between individuals and social groups. Social integration conditions existence, functioning and activity of every social group or community”.¹²

Whereas the former denotes the cohesion of a system (e.g. of a society) as a whole, social integration indicates the inclusion of individual actors in a system. Typically we mean social integration when speaking of the integration of migrants. In this context we distinguish between further four dimensions¹³:

1. Acculturation (also: socialisation) as a process of transmitting knowledge. It is necessary for successful interaction in society, e.g. the acquisition of a language and cultural standards;
2. Placement refers to the acquisition of positions in a society, e.g. in the educational or economic system, but also as a citizen. The process of placement is associated with the acquisition of rights and with the opportunity to gain socially relevant capital;
3. Interaction denotes the formation of interethnic networks and relations. This includes friendships, marriage relations, membership in associations or involvement in social groups

12 I. Koryś, *Integracja imigrantów a asymilacja, segregacja i marginalizacja – słowniczek podstawowych pojęć*, IOM (Międzynarodowa Organizacja do Spraw Migracji), http://www.enigma.wsb.pl/debata/download/integracja_imigrantow.pdf, [online 21.5.2012].

13 H. Esser, *Soziologie, Spezielle Grundlagen. Band 2: Die Konstruktion der Gesellschaft*, Frankfurt a. M, 2000, pp. 4–20.

generally, and with that the opportunity to gain social and cultural capital;

4. Identification indicates the individual's identification with a given society. The person considers him/herself part of a whole. Identification occurs on both a cognitive and emotional level.¹⁴

The different dimensions of integration are not, of course, independent of one another. Placement, for example, assumes a certain degree of acculturation (especially language acquisition). And, building on this, firstly interaction and then identification with a society become possible. If a person is fully integrated in all four dimensions we speak of assimilation, whereby the individual's cultural autonomy and, therefore, cultural diversity may also be lost. If, however, we regard immigration as an opportunity to accept different cultures on equal terms and to interact (multiculturalism), then cultural autonomy must be retained. The cultural and social integration relations of people to their practices, symbols and objects do not supplant or mutually exclude one another, but rather amplify the possibilities for people to live together¹⁵.

We can therefore define social integration as the inclusion and acceptance of migrants in institutions, networks and positions in a society. The process of integration should be understood as an interactive dialectic social process between immigrants and the receiving society that spans generations. A pool of shared values and standards (e.g. the rule of law) is stressed as the basis for a multicultural coexistence. Language acquisition (acculturation) is regarded as the key to social integration in the receiving country and, building on that, the structural assimilation of national groups within the education system and labour market (placement). Placement in society is so central because it facilitates participation in social events. For, in addition to the opportunity to acquire economic capital and achieve recognition,

14 L. Pries, , *Arbeitsmigration und Inkorporationsmuster in Europa*, (in:) L. Pries (ed.), "Zwischen den Welten und amtlichen Zuschreibungen", Essen, 2005, pp. 15–43.

15 *Ibidem*, pp. 15–43.

successful placement gives the position–holder the feeling of being needed and part of society.¹⁶

This social system in which aims set by a particular culture are fully accepted by individuals and achieved by socially adopted institutional measures may be considered integrated. The high level of social integration can be characterized by the intensity of contacts between members of a particular community, the system of solid social bonds uniting individuals and groups and shaped awareness of identification and connection between individuals and groups. A social disintegration i.e. breach and disappearance of norms of social coexistence, losing social ties and limiting social communication is the opposite of social integration.¹⁷

An integration is also perceived as a reciprocal process of mutual adaptation of immigrants and the society in economic, social, cultural and political dimensions. The integration assumes preservation of cultural integrity of a group assimilating with the receiving society with simultaneous aspiration for becoming an integral part of a new social structure hence assuming a certain level of adjustment from the side of new groups. Foremost, it is an outcome of individual choices but the process is to some degree spontaneous. The notion of integration comprises however not only the process of changes in relations between an immigrant and the receiving society but also its outcome i.e. the status of social relations as a result of integration process¹⁸ This definition of integration assumes the necessity of interaction from the side of foreigners. It is difficult to describe an integration as a the process under duress. The integration of a foreigner with the society of the receiving country is not possible without good will from the person being integrated.

16 A. Damelang, M. Steinhardt, *Integration Policy at a Regional Level in Germany*, "Focus Migration. Policy Brief", No 10,5,2008, p. 2.

17 *Ibidem*, p. 2.

18 A. Kicingier, *Unia Europejska wobec zagadnienia integracji imigrantów*, "CEFMR Working Paper" 2/2005, p. 3.

According to Carrera¹⁹, there are three basic models of integration, which result in various status and rights of third-country citizens in a particular state:

- Multicultural model – based on respecting and protecting diversity (Holland, Sweden, the United Kingdom);
- Assimilation model – based on the assimilation of immigrants with traditional, national values which dominate in the country (France);
- Exclusive model – which can be characterised by restrictive legislation and policy towards immigrants; immigrants' stay on the territory of a particular country is treated as a temporary one (until recently Germany, Belgium, however the policies of the aforementioned countries have been reformed lately).²⁰

Different models of policy towards immigrants result in the situation that their legal status and the process of obtaining citizen's rights is different in every member state. The differences in domestic laws in particular countries hence different access to political rights or the lack of the aforementioned rights may lead to exclusion or weak participation in political life of the receiving society and even to the lack of interest in what is happening in the country or the lack of involvement.²¹

An educational factor is closely connected with integration. According to Atger, education and political participation of immigrants are interconnected. The author emphasizes that appropriate actions in the area of education aimed at young immigrants constitute a crucial element in reinforcing their participation in the society. Education targeted at this subject area contributes a lot in the development of active citizens.²² Political stimulation of immigrants through education

19 S. Carrera, *Comaprison of Integration Programmes In the EU, Trends and Weaknesses*, "Challenge Papers" No.1/March, Bruksela, 2006, p. 2.

20 *Ibidem*, p.3

21 M. Lesińska, *Inkluzja polityczna imigrantów w państwach przyjmujących, prawa polityczne i wyborcze oraz ich kontrola w procesie integracji*, (in:) S. Łodziński, A. Grzymała-Kazłowska (ed.), „Problemy integracji. Koncepcje, badania, polityki”, Warszawa, 2008, pp.158–159.

22 A.F. Atger, *Education and Political Participation of Migrants and Ethnic Minorities in the UE*, CEPS Special Report, Bruksela, 2009, www.ceps.eu, [online 21.8.2012].

and legal regulations should encapsulate such issues as: participation in elections; participation in public sphere, being ready to take part in institutions and organizations. The rights of foreigners to participate in public and political life enable them to affect their own status giving the feeling of being a part of the society but also the possibility of consultancy with the authorities and representatives of public administration in the issues concerning immigrants. Willingness to participate in political life thanks appropriate education and the representation of immigrants in public life are of key importance in achieving success in the integration process. Providing third-country immigrants who legally reside on the territory of the EU with institutional opportunities to take part in public and political life by granting rights and imposing obligations is one of the priorities stipulated in the EU documents.²³

In the EU regulations integration is defined as “a two-way process involving adaptation on the part of both the immigrant and of the host society”²⁴ or more precisely as „ a two-way process based on mutual rights and corresponding obligations of legally resident third country nationals and the host society which provides for full participation of the immigrants. ”²⁵

The European Union displays a wide variety of ethno-cultural and national affiliations and identities. It has entered a process of “diversification of its diversity”, which calls for a specific European debate about European forms of diversity management.²⁶

In a number of existing member states sub-national political mobilisation promotes ethno-regional identities as groups claim recognition as national minorities, as ethnic groups or even sometimes, full independence. In this context, one could mention that the European Union is and will continue to be a region of immigration. Migrants

23 M. Ziola, *Integracja a prawa i swobody polityczne*, „Raporty i analizy. Centrum Stosunków Międzynarodowych”, Centrum Stosunków Międzynarodowych, Warszawa, 2010, p. 10.

24 European Communities (2000d), Communication from the Commission to the Council and the European Parliament: On a Community immigration policy, COM (2000) 757, pkt. 3.5.

25 European Communities (2003d), Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment, COM (2003) 336 final, p. 3.1.

26 M. Martiniello, *Towards a coherent approach to immigrant integration policy(ies) in the European Union*, www.oecd.org/dataoecd/42/58/38295165.pdf, [online 22.8.2012], p. 1.

come from all over the world following new patterns of migration. Some of them settle and adapt culturally to their new environment while simultaneously enriching the local culture and the variety of ethno-cultural identities. Others also maintain transnational links and activities. Immigrants and immigrant origin populations in European cities are undoubtedly bound to increase in the future. As a result, new ways of life, new religions, new visions of the world, new cultures are constantly being introduced into the European social fabric. Compared with other parts of the world, the issues of indigenous minorities and post-slavery minorities (like the African-Americans) are much less relevant in the European Union. However, the Gypsies everywhere suffer a high level of discrimination and racism while at the same their culture is often celebrated. Their position is specific in the sense they are often forgotten both in migration debates and national minorities' debates.²⁷

Developing a European immigration policy without simultaneously framing a European integration policy would be problematic. Issues such as economic and employment integration, public goods sharing, ethnic and cultural diversity, social and political participation should be discussed in terms public policy goals.

Member states acknowledged the economic and demographic challenges faced by the European Union (population ageing, labour needs, transformations of migration flows, global competition) and the necessity to design a common immigration as well as a European immigrant integration policy framework. Debates focus essentially on the legal nature of integration programs and on the type of integration measures. The discussions also have concentrated on the mandatory nature of the texts and consequently on which kind of sanctions (financial or legal) to take in the case of non respect either by member states or by individuals. At the same time, the European social and political context is tense with a regain of far right parties, populist expressions of frustrations, tensions, racist and xenophobic violence, and a mainly negative media coverage on immigration issues.²⁸

27 *Ibidem*, p. 1.

28 *Ibidem*, p. 2.

Therefore, it can be concluded that the notion of integration cannot be understood in a uniform way. Its context is different depending on the instruments used (legal, social, economic).

The documents of the European Union define the notion of integration as “a two–way process based on reciprocity of rights and obligations of third–country nationals and host societies that foresee the immigrant full participation” and as an “balance of rights and obligations”²⁹, the first and second common basic principle state that “integration is a dynamic, two–way process of mutual accommodation by all immigrants and residents of Member States” and “implies respect for the basic values of the European Union”.³⁰

The use of a different terminology is indeed a source for confusion that carries on different dangers. The terms “adaptation”, “values” and “responsibilities” tend to develop a paternalist vision of integration. Interpretations of adaptation as assimilation is frequent, the definition of “responsibilities” does not have legal implications in comparison with “rights” and the determination of the “European values” could be a point for discussion.

One of the principles included in the aforementioned document refers to anti–discrimination policies. It should be emphasized on existing legal framework. It does not either acknowledge that urban ethnic enclaves could also favour integration and provides room for ethnic entrepreneurship, social cohesion and social mobility. It only describes the “poor urban areas” as dysfunctional for immigrants. Especially, the reference to “the rights and equality of women and the freedom to practice or not practice a particular religion” as well as the mention of possible “legal coercive measures” should be rephrased in terms of rights and obligations, not in terms of values.³¹

Immigrants should be involved in the process of aim and goals fixing in the field of integration. Since integration is a disputed

29 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment, Brussels, 3.6.2003, COM (2003) 336 final, <http://eur.lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0336:FIN:EN:PDF>, [online 26.6.2012]

30 *Ibidem*.

31 *Ibidem*.

academic concept and since there is no long term vision of a European Union integration model, it might be profitable to concretely define integration in terms of fair participation of target individuals and groups in the social, economic, cultural and political spheres of the host European societies. In this perspective, a satisfactory level of immigrant integration is achieved when immigrants have similar participation patterns than non-immigrant citizens. Concretely, it means for example similar labour-market participation (economic dimension), similar electoral turnout patterns (political dimensions), similar structure of attitudes towards fundamental democratic values (cultural dimension) and similar access to social goods (social dimension).

It is always necessary to make a clear distinction between integration (or participation) and integration (or participation) policies. Integration policy is a set of measures applied by (government or local) authorities which create conditions encouraging integration and which make the individual's decision on this matter easier³². Considering the place of integration policy among other policies adopted by the state, it could be classified as a part of immigration policy³³. It comprises two elements – the policy of immigration control (the principles of selection and foreigners' entry which include the regulation on visa issuance, border control etc.) and the policy towards immigrants (conditions which are provided for foreigners after their arrival e.g. a residence permit. Integration policy constitutes a part of the latter component of immigration policy.

Some degree of integration (or participation) always takes place, even without integration policies. Integration policies sometimes produce unintended effects. However, an economic factor always plays a crucial role in political integration. For example, the introduction of compulsory and costly integration programmes for newcomers may result in keeping newcomers at the margins of society for economic reasons. Those newcomers who do not possess the sufficient resources

32 F. Heckmann, D. Schnapper (ed.), *The Integration of Immigrants in European Societies. National Differences and Trends of Convergence*, Stuttgart, 2003, pp.10–11.

33 E. Meyers , *Theories of International Immigration Policy – A Comparative Analysis*, "International Migration Review", vol. 34/2000.

to pay for these programmes may decide not to register and choose alternative modes of living in the new society.

A certain degree of social, economic, cultural and political integration (or participation) of immigrants and their offspring always takes place in any society of immigration. In policy terms, it would be useful to make at least a distinction between the initial phase of the integration (or participation) process and the following steps. The first step of the integration (or participation) process is adaptation. During that period, the immigrant learns at least some basics of the language of the new country, how the society concretely works, how to have access to housing, schools, the health care system, the labour market, etc. After that period of settlement, the migrant continues her/his path and encounters various difficulties and obstacles in the process of participation in the various spheres of society.³⁴

The process of integration does not take place at the same speed in the sphere of culture, politics, society and economy. For example, excellent labour–market integration can coexist with a very bad social and political integration. The case of Japanese expatriate communities in major European cities is a good illustration of the differentiation in the integration (or participation) process. Usually, they enjoy a privileged position in terms of employment and wages (the Japanese in Brussels). But they usually do not take part in local social and political life and they do not participate in the local life. To a lesser extent, the same could be said of many European civil servants and experts living in Belgium. Their employment situation is very much valued. They share the European culture and value they contribute to define but their social and political participation in Brussels and Belgium life is not very intense.³⁵

Ideally, immigrants reach integration when they fairly participate both socially, economically, culturally and politically in the host society. The receiving states themselves play a key role in shaping coherent integration policy but the involvement of foreigners is equally important. It is particularly visible in economic and social spheres.

34 M. Martiniello, *op. cit.*, p. 1, [online 26.6.2012].

35 *Ibidem*, p. 10.

Immigrants do not wait for the implementation of integration policies to start the process of integration (or participation) especially in the economic and social sphere.

Integration actions can take different forms and refer to various aspects of state activity. We have a few spheres of integration. The economic integration (or participation) of immigrants largely depends on the structure. Finding a stable and well-paid job is much more difficult for any job seekers and therefore also for migrants in regions struck by high unemployment rates than in rapidly developing countries. Consequently, these regional disparities should be taken into account when assessing immigrants' economic integration.

At the cultural level, immigrants do not generally endorse an abstract cultural "model". They participate in the European culture, provided that this expression is meaningful, is mediated through their participation in the local version of that European culture. Cultural participation develops through social interactions between immigrants and the local populations in daily life.³⁶

Politically, immigrants will find it easier to participate, all other things being equal (i.e. political rights), in regions where there is a general strong political participation than in regions characterized by a political apathy. This partially explains the disparities in political participation of immigrants in different European regions.³⁷

The legal status of the incoming migrant has a strong impact on the process of integration (or participation). Migrants arriving with a work permit and an employment contract have *de facto* solved the issue of economic integration. On the contrary, when asylum seekers are legally prevented from working, they are also banned from any economic integration and are forced into the underground economy to find a job allowing them to survive.

It needs to be emphasized that regardless of the way the notion of integration will be interpreted, undoubtedly foreigners do not constitute a homogenous group. Some scholars believe that integration actions

36 *Ibidem*, p. 12.

37 *Ibidem*, p. 12.

are targeted at foreigners legal residing on the territory of the receiving state.

Illegal immigrants are not targeted by integration policies. Although regularization legislation in various member states might be considered as a first step in the integration process, they seemed to be perceived as an appeal for more unlawful immigration flows.

Only the citizens of a member state living within the border of their nationality state enjoy the full civil, socio-economic and political rights, that is the full citizenship. In terms of the set rights they enjoy, they are the only fully included category. Even though a growing number of them is effectively excluded from the processes of redistribution of economic, social and political resources. At a lower level, the citizens of a member state of the European Union who are living in another member state than their own enjoy only limited political rights (mainly the right to vote and to be elected at the local and European level). In other respects, their civil rights are not complete. For example, they do not enjoy total freedom of settlement in another European Union country. In order to avoid movements of unemployed workers from member states with low social protection to member states that offer a high level of protection, two conditions must be fulfilled by the European citizens if they want to settle in another member state, that is financial independence and independence in terms of social security. Furthermore, their opportunity to have access to the civil service in their country of residence remains limited. Eventually, even though this category of European citizens is largely protected by European Union law, the full equality between nationals and other European Union citizens is not yet achieved.³⁸

1.3. Political participation and representation of foreigners

There are two methods of conduct as far as the attitude of the receiving state towards foreigners is concerned. The first one is

38 *Ibidem*, p. 14.

grounded in the statement that a foreigner who resides in a particular country and regularly pays taxes should be treated as a citizen of this country.³⁹ It is not favourable treatment and merely the discrimination ban is obeyed.⁴⁰ There are some limitations which arise from the ban in the scope of discretionary authority towards foreigners. Some scholars state that a foreigner and a citizen of a particular country cannot be treated equally. Hence a foreigner should be treated in accordance with certain minimal standards of international law, which is not in contradiction with more favourable treatment for the citizens of the particular country. The latter statement is rather prevailing although there is a trend to treat both foreigners and the own citizens equally.⁴¹ The discrimination ban is frequently emphasized and the fact that an individual should be treated as an independent subject of public international law who takes advantage of international instruments of human rights protection regardless of his/her citizenship.

Three various systems of treatment of foreigners are mentioned in the doctrine. The first one refers to national treatment i.e. foreigners are treated much the same as particular country's citizens. Białocerkiewicz remarks that the community law introduces the standard of national treatment to a large extent however at the same time contains restrictive regulations towards non-EU citizens.⁴² This second approach is based on special treatment of foreigners whereas the third treatment indicates a particularly privileged position of foreigners⁴³.

Within the first system a foreigner is generally granted the same rights as are granted to a particular country's citizens. Under a special treatment foreigners are granted rights which were precisely specified in domestic law and international agreements. Treating in the most privileged way means that citizens of a particular state are granted such

39 J. Gilas, *Prawo międzynarodowe*, Toruń, 1999, p. 254.

40 W. Czaplinski, A. Wyrozumska, *Prawo międzynarodowe publiczne*, Warszawa, 2004, p. 175.

41 A. Szklanna, *Ochrona cudzoziemca w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka*, Warszawa, 2010, p. 46.

42 J. Białocerkiewicz, *op. cit.*, p. 445.

43 W. Górłaczek, S. Sawicki, *Prawo międzynarodowe publiczne w zarysie*, Warszawa, 2006, p. 256.

rights which the citizens of the third country (most privileged in the area) already possess or will be granted in the future⁴⁴.

Numerous scholars draw attention to the reservation in domestic law and international agreements on reciprocity⁴⁵. The principle of treatment based on reciprocity is often applied to national and special treatments. It means that country A will grant particular rights to citizens of country B provided that country B grants the same rights to the citizens of country A.

The moment the foreigner enters the territory of the particular country s/he comes under the law of this country in the same way as this particular country's citizens.

Naturally, the scope of rights that are granted to a foreigner is usually narrower than the scope of rights granted to the citizens of a particular country although numerous international agreements including those on human rights protection are targeted at guaranteeing the equality of treatment of both foreigners and the citizens. Moreover, the rights granted to foreigners, similarly to the citizens' rights are frequently restricted due to security and public order. Foreigners usually cannot perform particular work, for example, cannot be attorneys, legal advisors, civil servants, transport contractors.⁴⁶ They cannot be employed as captains, officers and even crew members of maritime vessels and aircrafts, either.⁴⁷ In some countries, they are also banned from having shares in the enterprises or the number of shares they may possess is limited. Foreigners cannot own a real estate without a special permit, otherwise the acquisition of this property is considered invalid. The turnover of maritime vessels may be limited too.⁴⁸

The possibility of active participation in political life is of key importance from the perspective of full and legal participation in the lives of the citizens of the receiving country.

44 J. Pieńkos, *Prawo międzynarodowe publiczne*, Kraków, 2004, p. 199.

45 A. Kłafkowski, *Prawo międzynarodowe publiczne*, Warszawa, 1979, p. 270.

46 J. Gilas, *op. cit.*, p. 256.

47 *Ibidem*, p. 257.

48 Ust. 24.3.1920 o nabywaniu nieruchomości przez cudzoziemców, Dz.U. 2004, Nr 167, poz. 1758.

In the context of political rights of foreigners the reasons for their limitations are rather referred to, not their availability. Art. 7 of the 20 February 1928 Pan– American Convention on Legal Status of Foreigners⁴⁹ banned foreigners from performing any political activity, which was reserved only for the citizens of the particular country. Practice in this respect was far more restrictive. A foreigner was believed not to conduct any political activity on the territory of the receiving country. According to some scholars, it was quite justifiable as those rights are grounded in special bonds the citizen has with the country, the nation and are based on the duty of loyalty and dependence also outside the country.⁵⁰ These rights may quite frequently be limited if it is prescribed in national legislation and it is necessary due to security protection and public order, health and public morals.⁵¹

The issues of political participation and representation are of central importance in any multicultural democracy. Political participation is one of the most studied concepts in social and political sciences. Two approaches have mainly dominated the literature. The first approach is sociological and has concentrated traditionally on structural–objective variables in its attempts to explain the determinants of political participation⁵². The second approach is the psychological one which has recently focused on the topic regarding personal attitudinal variables. In the past research, social psychological factors were largely ignored in the research and mainly individual differences in political interest and beliefs of political efficacy were studied. However, recently, social psychological theories focusing on the intergroup attitudes, emotions and behaviours in relation with different forms of political participation have been proposed.⁵³

In sociological literature, political participation has been conceptualized primarily as intent or effect of influencing governmental

49 The sixth pan American conference. (1928). Editorial research reports 1928 (Vol. I). Washington, DC: CQ Press. Retrieved from <http://library.cqpress.com/cqresearcher/cqres-rre1928011200>, [online 20.8.2012].

50 R. Bierzanek, J. Symonides, *op. cit.*, p. 255.

51 A. Szklanna, *op. cit.*, p. 55.

52 L.W. Milbrath, M.L. Goel, *Political participation: How and why people get involved in politics?*, University Press of America, Washington, D.C. 1982, p. 23.

53 B. Klandermans, *The social psychology of protest*, Oxford UK, 1997, pp. 5–23.

actions⁵⁴. Review, political actions have been differentiated as indirect (e.g. discussing politics and recruitment), electoral (i.e. voting, campaign activity, party membership or member of a political club), and non-electoral activities. The last one involved both conventional (e.g. informal community, contacting, organizational memberships, attending meetings or serving on boards) and unconventional actions (e.g. petitioning, lawful demonstration, boycotts, joining in wildcat strikes, refusing to pay rent or taxes, occupying buildings, blocking traffic, destroying property).⁵⁵

Political participation is traditionally understood as involving the formalised participation in elections, the active involvement in political parties, and up to standing for election.⁵⁶ In terms of political participation, the local voting and eligibility rights are already a reality in several member states of the EU. Despite resistances in some member states, the trend moves in that direction. Again, the local voting rights do have a symbolic value but they also provide a tool to participate in the management of the cities for all the residents. Forms of consultations could also be discussed in order to promote the local political participation of all residents and of immigrant origin citizens in particular. In that respect, the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level of February 1992⁵⁷ is certainly a document that could be ratified by at least the member states of the EU Union and of the Council of Europe. More generally, promoting various kinds of arenas for dialogue and discussion between citizens and residents is an interesting way to consolidate the EU democracy. As regards the issue of representation, it seems obvious that elected political institutions should reflect the sociology of the citizenry. In many EU countries, women, ethnic and

54 M. G. Yalcin, *The effects of citizenship status on political participation in the case of young immigrants living in Germany*, http://youth-partnership-eu.coe.int/youth-partnership/documents/EKCYP/Youth_Policy/docs/Citizenship/Research/10_The_effects_of_citizenship_status_on_political_participx.pdf, [online 7.7.2012], p. 2.

55 M.G. Yalcin, *op. cit.*, p. 1.

56 F. Miera, *Political participation of migrants in Germany, EMILIE – a European approach to multicultural citizenship: legal, political and educational challenges*, "Report for the EMILIE-project", 2009, p. 3.

57 The Council of Europe, *The Convention on the Participation of Foreigners in Public Life at Local Level* was drawn up within the Council of Europe by the Steering Committee on Local and Regional Authorities (CDLR), 5.2.1999, ETS No. 144.

immigrant groups are still largely underrepresented in formal politics. Positive action may be discussed as a means to encourage minorities to choose the former political career. Furthermore, political parties should be more welcoming to ethnic minority members. The conception of multicultural democracy and of EU multicultural citizenship is understood as a way to stimulate the discussion and not as a final project. This shows the direction which the actions aiming at increasing the level of foreigners' participation in political life should take.

It supposes the constitution of a citizenry made of active citizens who share the same rights and duties, the same public space, support the democratic project and respect the law and the legal and political procedures. These citizens can display varied and multiple identities as different cultural practices both in private and in public. Their identity and cultural choices do not affect their position in the social, economic and political order. The dimension of gender certainly needs to be discussed in relation to immigrant integration and EU multicultural citizenship.

There have been three basic European responses to the arrival of immigrant ethnic minorities in the post-1945 period. The first is that of assimilationism, which is most strongly affirmed in France. The second is that of the *gastarbeider* system of the German-speaking countries, under which immigrant workers are denied political citizenship. The third is one or another sort of multiculturalism commonly thought to be exemplified by Sweden, the Netherlands and the United Kingdom. In the Swedish case, provision for ethnic minorities was conceived as part of the provision of the welfare state.⁵⁸ The problem is that every system of admitting foreigners underwent numerous changes and transformations which resulted from changes both in the social structure of groups of foreigners and in the EU member states as well.

58 J. Rex, G. Singh, *Multiculturalism and Political Integration in Modern Nation-States: Thematic Introduction*, *International Journal on Multicultural Societies (IJMS)*, "Multiculturalism and Political Integration in Modern Nation-States", Vol. 5, No. 1, 2003, p. 6.

2. LEGAL CONDITIONS FOR POLITICAL PARTICIPATION

2.1. International conditions for political participation of foreigners

The right of everyone to take part in the conduct of public affairs, directly or through freely chosen representatives, as well as to vote and be elected at genuine periodic elections is prescribed in Article 25 of the International Covenant on Civil and Political Rights (ICCPR).¹ This provision is an elaboration of Article 21 of the Universal Declaration on Human Rights which states that “Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.”² With regard to minority participation in particular, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic or Religious Minorities (UNDM)³ states that ‘persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life’ [Article 2(2)] and the right to ‘participate effectively in decisions on the national, and where appropriate, regional level, concern in the minority to which they belong or the regions in which they live’ [Article 2(3)]. The Covenant is a legally binding instrument with the Human Rights Committee acting as a monitoring body and a mechanism for individual complaints. UN declarations, on the other hand, are resolutions adopted by the General

1 International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, <http://www2.ohchr.org/english/law/ccpr.htm>, [online 21.7.2012].

2 Universal Declaration on Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, <http://www.wvda.org.au/undechr1.pdf>, [online 12.7.2012].

3 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted in New York 18 December 1992, (GA resolution 47/135), <http://www.oas.org/dil/1992%20Declaration%20on%20the%20Rights%20of%20Persons%20Belonging%20to%20National%20or%20Ethnic,%20Religious%20and%20Linguistic.pdf>, [online 21.8.2012].

Assembly of the United Nations and as such, in formal terms, are not legally binding. They do, however, possess moral and political force. As regards the UDHR, a number of legal experts have proposed that it should be elevated to the status of customary international law. The same, evidently, cannot be said of the UNDM. Nevertheless, it is worth recalling that the UNDM was adopted by the General Assembly by consensus.⁴

Thus international legal regulations grant foreigners rights to participate actively in political life of the receiving state.

2.2. Political rights of foreigners at the European level

One of the acts which is of key importance for integration process of foreigners through increasing the level of their political participation is the Convention on the Participation of Foreigners in Public Life at Local Level.⁵

According to the Convention, the contracting states to the convention undertake to guarantee foreigners residing on its territory, on the same terms as to its own nationals:

the right to freedom of expression; this right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers; this article does not prevent states from requiring the licensing of broadcasting, television or cinema enterprises from foreigners;

the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of their interests; the right to freedom of association implies, in particular, the right of foreign residents to form local associations of their own for purposes of mutual assistance,

4 A guide to minorities and political participation in South–East Europe, http://www.kbs–frb.be/uploadedFiles/KBS–FRB/05_Pictures,_documents_and_external_sites/09_Publications/PUB_1854_MinoritiesPoliticalParticipationSEE.pdf, p. 22, [online 7.8.2012].

5 The Convention on the Participation of Foreigners in Public Life at Local Level. 5.2.1992, European Treaty Series (ETS), No 144.

maintenance and expression of their cultural identity or defence of their interests in relation to matters falling within the province of the local authority, as well as the right to join any association.⁶

The Convention obliges the parties to ensure that there are no legal or other obstacles to prevent local authorities in whose area there is a significant number of foreign residents from setting up consultative bodies or making other appropriate institutional arrangements designed to form a link between themselves and such residents, to provide a forum for the discussion and formulation of the opinions, wishes and concerns of foreign residents on matters which particularly affect them in relation to local public life, including the activities and responsibilities of the local authority concerned, and to foster their general integration into the life of the community.⁷

The parties are obliged to ensure that representatives of foreign residents participating in the consultative bodies or other institutional arrangements can be elected by the foreign residents in the local authority area or appointed by individual associations of foreign residents.

Each Contracting party to the convention undertakes to grant to every foreign resident the right to vote and to stand for election in local authority elections, provided that s/he fulfills the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the state concerned for the 5 years preceding the elections. The convention, however, may declare the limitation of rights of foreign residents to the right to vote only. Parties may make a reservation that the residence requirements are satisfied by a shorter period of residence.

Each state ratifying the convention undertakes to ensure that information concerning rights and obligations in relation to local public life is available to foreign residents staying on its territory. It was also assumed that this Convention will be open for signature by the member states of the Council of Europe.

6 *Ibidem.*

7 *Ibidem.*

The importance of the aforementioned Convention has been recognized many times by the EU in its actions. The example may be the Draft Report on the Commission's Fourth Report on Citizenship of the Union which encourages member states that have not ratified the Convention of the Council of Europe on the Participation of Foreigners in Public Life at Local Level to ratify the aforementioned convention. The states that have ratified the Convention are encouraged to apply Art. 6 of the Convention which stipulates granting every foreign resident the right to vote and to stand for election in local authority elections, provided that s/he fulfils the same legal requirements as apply to nationals and furthermore has been a lawful and habitual resident in the state concerned for the 5 years preceding the elections. Member states are also encouraged to extend the right to vote in local and European elections for third-country citizens who have been legally and permanently residing in the European Union for five years.⁸

The European Union can use several mechanisms to contribute to the development of integration policy that fosters awareness of each member state.

Art. 19 (1) I 2 of the Treaty establishing the European Community (TEC)⁹ introduced the right to vote and to stand as a candidate at European Parliament and municipal elections. It needs to be emphasized that the Court of Justice of the European Union (CJEU–ETS) stated that granting elections rights at least with reference to the elections for the European Parliament, should not be limited merely to the EU citizens¹⁰. Apart from the treaty itself, detailed arrangements for the exercise of the right of vote and to stand a candidate at European Parliament and municipal elections were stipulated in the Council Directive 93/109/EC of 6 December 1993 and the Council Directive 94/80/CE of 19 December 1994.

8 Committee on Civil Liberties, Justice and Home Affairs; Draft Report on the Commission's Fourth report on Citizenship of the Union, 1.5.2001 – 30.4.2004, 2005/2060(INI).

9 The Treaty Establishing the European Community C 321 E of 29.12.2006, consolidated version.

10 A. Bodnar, *Obywatelstwo Unii Europejskiej a ochrona praw podstawowych obywateli państw członkowskich* [in:] „Obywatelstwo Unii Europejskiej”, „Zeszyty OIDE” No 9, Warszawa, 2004, pp. 28–33 and 80–89.

The 1999 European Council in Tampere stated the necessity to define a stronger involvement in designing a common integration policy in order to offer third countries nationals “rights and obligations comparable to all European Union citizens”. For this matter, the fundamental reference is the Charter of Fundamental Rights, which was proclaimed in 2001 (and quoted in principle 8) and which does not distinguish between nationals and non-nationals in most of its dispositions. Additional texts include a Communication on family reunification (COM (2002) 225)¹¹, a Communication on long-term established third-country nationals (COM (2001) 127)¹², and a Communication on admission and stay conditions of third-country nationals’ workers (COM (2001) 386)¹³.

Other references to integration also comprehend communications relating to asylum policy, such as the European Council Directive on Member States’ minimum standards in receiving asylum seekers (2003/9/CE)¹⁴, and a legal framework to fight against discrimination applicable to all residents, regardless of their nationality (Directives 2000/43/CE and 2000/78/CE)¹⁵. Finally, based on the Lisbon mandate, the EU has intended to define coordination methods in the fields of labour and social integration.

In June 2003, the Commission presented a communication to the Council, to the Parliament, to the European Economic and Social Committee and to the Regions Committee on immigration, integration and employment (COM (2003) 336). The Communication defined the integration as follows: “it is a two-way process based on reciprocity

11 European Parliament legislative resolution on the amended proposal for a Council directive on the right to family reunification, (COM(2002) 225 – C5-0220/2002 – 1999/0258(CNS).

12 Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, Brussels, 13.3.2001, COM(2001) 127 final, 2001/0074 (CNS).

13 Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, Brussels, 11.7.2001, COM(2001) 386 final, 2001/0154 (CNS).

14 Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers, Official Journal of the European Union, L 31/18.

15 **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**, *Official Journal L 180, 19/07/2000*, **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**, *Official Journal of the European Communities, Official Journal of the European Communities L 303/16*.

of rights and obligations of third–countries nationals and host societies that foresee the immigrant full participation”. Integration is perceived as a “balance of rights and obligations”. The holistic approach targets all dimensions of integration (economic, social and political rights, cultural and religious diversity, citizenship and participation).¹⁶

Referring to a 2000 Communication (COM (2000) 757), the text determined the targeted population as essentially composed by “migrant workers and reunited family members, refugees and persons under international protection”. In November 2004, The Common Basic Principles (CBP) were aimed at designing a common framework for a European approach to immigrant integration. The paper suggested a framework to serve as a reference for the implementation and evaluation of current and future integration policies. In that sense, it formed a second step coming after the June 2003 Communication on immigration, integration and employment. It was followed by the publication of the “Integration Handbook” which described and suggested practical implementation policies for the integration of migrants (November 2004) and by the Green Paper on an EU approach to managing economic migration (COM (2004, 811 final).

In 2005, the Commission released its agenda for integration, which was an attempt to move beyond the Common Basic Principles. The difficult debate on a framework directive on legal migration continued however with some disruptions. The programme INTI entered a new phase and the new INTA fund was launched. The Plan on Legal Migration published in December 2005 is another important initiative concerning integration policies (COM (2005) 669 final).¹⁷

Integration is a concept used to describe social, political, cultural and economic processes that occur when migrants arrive in a new society. It has stimulated lots of debates in academia over the years and

16 Communication from the Commission to the Council, the European Parliament, the European economic and social committee and the committee of the regions on immigration, integration and employment, Brussels, 3.6.2003 COM (2003) 336 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0336:FIN:EN:PDF>, [online 21.7.2012].

17 Communication from the Commission Policy Plan on Legal Migration (SEC(2005)1680), Brussels, 21.12.2005, COM(2005) 669 final, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0669:FIN:EN:PDF> , [online 30.7.2012].

nowadays there still is no common understanding of what the concept of integration actually refers to.

“Integration” is believed to be a certain normative value, provided that some legal grounds exist for specific integration activities. It is however difficult to decide univocally when integration as a process is accomplished.

The various “models of integration” available throughout the European Union do not describe and explain a process development when migrants arrive into a new society. They rather present an ideal situation, a desirable result of a process that needs stimulation of policy. Both the French republican model and British multicultural model, for example, are idealistic views on national society. They are not useful to describe and explain how integration takes place in society day after day. Once more, no consensus is possible since each member state has its own model of integration elaborated over the years. There is no consensus on a shared broad definition of integration either in academia or in the European policy-making world. There is no consensus on the ideal integrated European society for tomorrow either. To put it differently, there is no consensual European Union model of immigrant integration.¹⁸

The result is that the European policy debates, discussions and policy-making on integration takes place without a clear definition of integration and without a clear vision of the final result to be reached by European policy-making process.

What is evident while examining the Common Basic Principles on Integration. The document: Common Basic Principles¹⁹ (CBP) suggests a framework to serve as a reference for the implementation and evaluation of current and future integration policies. It presents positive points that need to be reinforced like the fact that member states governments acknowledge that integration can be successful and

18 M. Martiniello, *op. cit.*, p. 16.

19 From principles to practice The Common Basic Principles on Integration and the Handbook Conclusions Updated, Brussels, 2010, http://www.migpolgroup.com/public/docs/174.Updated_From_principlestopractice_theCBPsonIntegration&HandbookConcls.pdf, p. 5, [online 28.8.2012].

that it makes the case for investment. Furthermore, the CBP document states that equal rights and antidiscrimination policies are at the core of a proactive integration policy. There is a clear acknowledgement that immigration could be a benefit for the overall European Union in economic, social, political and cultural terms. The holistic approach mentions integration and immigration as creating “benefits” (Preamble 1), an “enrichment” (Preamble 2), and “the contributions immigrants make to the host society” (principle 3). This positive approach should be welcomed, although past immigration benefits which were not mentioned are recognized, too.²⁰

It is also stated that integration is considered as a “two-way process” including both migrants and their descendants, and the host societies. The references to the actors of integration are threefold: private sector, public sector and NGOs.

The fields of intervention appear quite extended. The CBP focus on employment and labour integration (principle 3), linguistic and educational skills (principles 4 and 5), non discriminatory access to public goods (principle 6), urban and social environment (principle 7), cultural and religious diversity (principle 8), citizenship and political participation (principle 9).²¹

Principle 9 appears to be very comprehensive and allows for a progressive interpretation on migrants’ political participation. It is clearly stated that “immigrants could even be involved in elections, the right to vote and joining political parties”, which should be welcomed. There are suggestions for mainstreaming integration policies (principle 10) and for an evaluation of member states actual integration policies (principle 11). These two principles offer a broad range of opportunities to include integration, as gender, in various public policies, and to evaluate, measure, correct and define new mechanisms of integration.²²

The approach to integration is linear and unidirectional. It is stated that integration may take comparatively much time but it will take place

20 Common Basic Principles for Immigrant Integration Policy In the European Union, <http://www.enaro.eu/dsip/download/eu-Common-Basic-Principles.pdf>, [online 2.7.2012].

21 *Ibidem*.

22 *Ibidem*.

eventually. On the contrary, the literature has shown that integration does not necessarily happen this way and that setbacks are always possible. The third generation is not necessarily better integrated than the second and the second that the first. Furthermore, integration cannot be considered as a process with a clear end. Integration is not reached ceaselessly.

Despite the fact that it is difficult to indicate a coherent and uniform integration policy in the EU, the EU regulations affect the shape of domestic legislation. Poland's access to the European Union meant the obligation to adjust legal regulations to the European Community legislation also in this matter.

3. POLITICAL PARTICIPATION OF FOREIGNERS IN POLAND

3.1. Integration policy in Poland

Among the three states whose legal regulations will be compared and analysed in this publication, Poland has the least experience of dealing with foreigners and shaping integration policy, which is due to a small number of foreigners coming to the territory of the Republic of Poland who intend to stay there. Consequently, foreigners are reluctant to integrate with the Polish society and to participate in political and public life actively. It does not mean however that the problem of integration of foreigners is ignored.

According to MIPEX data of 2007 on general situation in Poland, the immigration of third-country citizens into Poland is low but it tends to grow. As far as the policy on the admission to political freedoms and political participation is concerned, it can be stated that this policy has been assessed very well. Migrants have a very good access to political freedoms, may form associations and join political parties but cannot be candidates of these parties and vote in public elections. Immigrants may set up unions although such organisations cannot take advantage of public resources and are not consulted by the government. Nevertheless, the regulations on the access to citizenship have been assessed as unfavourable. The policy of Poland in this matter has been assessed as the one which is unfavourable towards immigrants as the period of legal residence on the territory of the Republic of Poland together with the required period of residence having a status of permanent citizen (which amounts to 5 years) is of 10 years.¹

1 J. Niessen, T. Huddleston, L. Citron, *Migrant Integration Policy Index 2007*, http://www.mipex.eu/sites/default/files/downloads/migrant_integration_policy_index_mipex_ii-2007.pdf, [online 21.7.2012].

Another MIPEX report was prepared in 2011. According to this version of the report, a non-EU immigrant in Poland has very limited opportunities to participate in political life. Poland scores last but one with the Czech Republic, just above Romania. No attempt has been made to improve this score since 2007. Immigrants cannot vote in any election at any level nor have their voice heard through an immigrant consultative body, despite trends in new countries of immigration (e.g. Spain, Portugal). They cannot form their own association or join a political party. These serious restrictions on basic civil liberties are also found in nine Central European countries. Immigrants do not obtain structural funds to represent their new communities in public debates.²

The issue of integration of citizens has been emphasized lately in the document: “Migration Policy of Poland – the current state of play and the further actions”³ (06 April 2011). It was emphasized that none of state institutions possess precise data on the number of citizens staying in Poland. On the basis of the total number of residence cards – the documents which confirm legal residence in Poland – the Office for Foreigners estimates that at the end of 2011 there were 97.000 foreigners in Poland thus foreigners constituted not more than one per cent of the whole population. In addition, the topic of migration in Poland is not as widely debated publicly as in other EU states, which however does not mean that it is not worth considering.

Experts have long noted that the national policy towards foreigners was not guided by a strategic approach. This is evident in the delay in the development of the Polish National Migration Strategy. Although the work on the strategy started in 2003, the document was only presented on 6 April 2011. According to a preliminary public announcement by the Department of Migration Policy of the Ministry of Interior, the Strategy would place significant emphasis on issues of integration of foreigners, including, inter alia: “definition of objective of integration”,

2 Migrant Integration Policy Index III, http://www.mipex.eu/sites/default/files/downloads/migrant_integration_policy_index_mipexiii_2011.pdf, [online 22.7.2012].

3 Zespół Do Spraw Migracji, Ministerstwo Spraw Wewnętrznych i Administracji, Polityka Migracyjna Polski – stan obecny i postulowane działania, Warszawa, 2011, http://www.osw.waw.pl/sites/default/files/Polityka_migracyjna_Polski_-_wersja_z_06-04-2011.pdf, [online 7.7.2012].

enabling a migrant to function independently in Poland, facilitated access to residence upon demonstrating a certain level of integration (e.g. language proficiency), complementarity of financing from the state budget and the European Fund for Integration of Third Country Nationals, support for activities familiarizing Polish society with issues and concerns of immigrants and vice-versa.

The Strategy does not appear to promote a multicultural model of activity of migrants. Instead, it seems to favor some form of assimilation, which could be concluded from the following objectives of the draft Strategy: proficiency in Polish is understood as vital for effective integration, preferences for foreigners of Polish origin in obtaining residence and work permits introducing preferential paths toward naturalization for spouses of Polish nationals and foreigners with command of Polish language. The Strategy adopts a dichotomous view of immigration, seeing in it, on the one hand, as an opportunity to exploit migrants' demographic, economic and cultural potential. However, at the same time, the document foresees potential social tensions and lack of tolerance on the part of the host country's citizens due to cultural distance as well as implicit and explicit competition on the labour market.⁴

The Strategy indicates some forms of migrants' participation in public life which are to be promoted. The recommendations pertinent to this issue concern for example: increasing the role of diasporas in foreigners' integration, support for migrants' organizations in active coexistence in civil society, defined, inter alia, as interest representation and promotion of own community, building "cooperation platforms", enabling migrants associations and individual migrants to cooperate with Polish associations, foundations and communities on cultural and social issues, strengthening the role of the state in providing migrants with information on legal employment and residence in Poland.⁵

These recommendations stem from the diagnosis provided in the Strategy, which notes the virtual absence of strong migrant diasporas (with the exception of the Vietnamese and the Armenians) and identifies

4 Zespół Do Spraw Migracji, Ministerstwo Spraw Wewnętrznych i Administracji, *op. cit.*

5 *Ibidem.*

as a problem of dispersion of migrants, who lack support or a sense of community that diasporas provide. However, the Strategy argues that the small scale of permanent immigration so far, the absence of the issue in the political debate and of social awareness have not guaranteed launching integration programmes for migrants other than refugees.⁶ Migration Strategy in the announced shape does not represent a departure from strategic directions outlined in other mid-term and long-term state planning documents. The current government adopted on 30 December 2008 a revision of the National Development Strategy for 2007–2015 in which it called for a “rational migration policy” as part of its employment–growth package. It is symptomatic that all the declared measures concentrated on maintaining ties and the return of Polish migrants residing abroad. The focus on the return migration of the Poles correlates with the diagnosis given in the original strategy, adopted in 2006, in which emigration, especially of young Poles, would constitute “draining of human capital”. The Strategy forecast “a growing migration to Poland” but viewed it negatively, expecting that it would result in the appearance of new legal, social and job market problems. The Strategy of 2006, revised in 2008, underscored the “complementary character” of labour immigration, which would only be admitted upon analysis of the migration balance in order to address skill shortages.⁷

A different – more open to participation – approach was adopted by the Ministry of Labour and Social Policy, which is the central authority responsible for social integration of migrants. In the Social Policy Strategy for 2007–2013, adopted by the government on 13 September 2005, Priority 7 (Social and professional integration of immigrants) tackled some issues related to civic and political participation of migrants. One priority is the ongoing cooperation with a platform of organizations representing or working on behalf of immigrants. A particular attention was paid to the need for building communities of refugees. It is worth mentioning that the document placed an active support for organization of diasporas in the context of unfavourable

6 *Ibidem.*

7 Zespół Do Spraw Migracji, Ministerstwo Spraw Wewnętrznych i Administracji, *op. cit.*

demographic trends in Poland, suggesting measures to attract younger compatriots to join the existing diasporas.⁸

In February 2007, the Interdepartmental Team for Migration was established by the Prime Minister. One of the five working groups within the Team (headed by the Minister of Labour and Social Policy), is concerned with the integration of foreigners. The working group's tasks include cooperation with non-governmental organizations and developing annual and long-term programmes for the European Fund for Integration of Third Country Nationals.⁹ The group encompasses representatives of state ministries, local governments, international and non-governmental organizations.

Another sign of growing openness of the state administration to nongovernmental opinions in the course of planning Poland's integration policy was the survey that the Ministry of Interior circulated in 2009/2010 among 97 institutions and organizations, including 16 migrant and minority organizations. Unfortunately, only 7 NGOs and 1 immigrant association responded to the survey, making the results indicative primarily of the government position on the question of directions of state integration policy.¹⁰ Such a low level of NGO interest in shaping integration policy indicates that even foreigners' integration is not an area of interest, neither of public administration nor non-governmental sector. Interestingly enough, the organisations of the third sector are very often active in the areas in which the state does not undertake particular actions.

The analysis of the results of the survey, published in January 2011, provides insights relevant to the discussion of the role of migrants'

8 P. Kazmierkiewicz, J. Frelak, *Political participation of third country nationals on national and local level. Poland: country report*, Instytut Spraw Publicznych, <http://www.isp.org.pl/uploads/filemanager/J.FrelakIP.KamierkiewiczPoliticalparticipationofthirdcountrynationalsonnationalandlocallevel1.PDF>, [online 3.9.2012], p. 8.

9 *Ibidem*, p. 9.

10 Ministry of Internal Affairs and Administration, *Analiza ankiety na temat polityki integracyjnej*, January 2011, http://www.forummigracyjne.org/files/171/Analiza_ankiety_integracyjnej.pdf, [online 28.7.2012].

participation in public life in their integration.¹¹ When asked whether foreigners ought to adapt, assimilate or integrate into the Polish society, most respondents pointed to some form of integration, and some of them underscored the importance of active participation in the process. For instance, the governor of Lublin named full participation in social and political life as one of the indicators of integration. The Ministry of Foreign Affairs rejected the option of assimilation, while one of the governors suggested that migrants ought to decide which option of relations with the host society they would be interested in. Assimilation was generally found inappropriate for migrants who originate from other cultural or religious traditions, in particular the Chechens. Some respondents noted that integration might follow adaptation, and be only of interest to some migrants as many newcomers to Poland are still not interested in staying in Poland, instead treating it as a stepping stone towards departure for more developed destinations. The only immigrants' association, that of the Armenians, responded that the proposed options represented stages of a lengthy process. The objective of granting comparable rights, responsibilities, and opportunities for all is at the core of European cooperation. As various reports point out, Poland, among other countries from Central Europe, still has regulations denying immigrants basic political liberties.¹²

The 2010 ECRI report on Poland reiterates earlier recommendations by the Council of Europe for the country to ratify the Convention¹³. It is worth noting in this context that all Scandinavian states and two of Poland's neighbours (the Czech Republic and Lithuania) have either signed or ratified the Convention. The ECRI report states that the Polish government admitted that they have already granted all European Union citizens the right to vote and stand in local elections and are not prepared to go beyond that.¹⁴

11 Ministry of Internal Affairs and Administration, Analiza ankiety na temat polityki integracyjnej, January 2011, http://www.forummigracyjne.org/files/171/Analiza_ankiety_integracyjnej.pdf, [online 14.8.2012]

12 J. Ferlak, P. Kazikiewicz, *op. cit.*, p. 10.

13 ECRI Report on Poland (fourth monitoring cycle), 15.6.2010, http://www.ckr.org.pl/files/110722164015_POL-CbC-IV-2010-018-ENG.pdf, [online 24.8.2012].

14 *Ibidem*.

3.2. Political rights of foreigners in Poland

The 6th April 2011 Report “Migration Policy of Poland – the current state of play and the further actions”, which was prepared for a long time by the inter-ministerial Committee on Migration (in the Ministry of the Interior and Administration), indicates legal acts which are of key importance for integration process. These include: the Act of 15 February 1962 on the Polish Citizenship¹⁵, the Act of 7 April 1989 – Law on Associations¹⁶, the 17 May 1989 Act on Guarantees of Freedom of Conscience and Religion¹⁷; the Education System Act of 7 September 1991¹⁸; the Act of 13 June 2003 on Providing Protection to Foreigners within the Territory of the Republic of Poland¹⁹; the 12 March 2004 Act on Social Assistance²⁰; The Act of 20 April 2004 on Employment Promotion and Labour Market Institutions²¹; the 27 July 2005 Act – Law on Higher Education²².

However, the report does not mention any legal acts which would be of a key importance to increase the level of foreigners’ participation in political life of the state. The rights to vote and to stand as a candidate have been not referred to directly²³. The legal acts concerning the participation of foreigners in political life in the territory of the Republic of Poland have been enumerated.

The legal grounds for the possibility of foreigners’ political participation in the Republic of Poland are mainly included in the Constitution of the Republic of Poland²⁴. Under this act all persons are ensured: freedom to express opinions” (Art. 54), “freedom of peaceful assembly” (Art. 57), “freedom of association” (Art. 58). A constitutional guarantee of freedom of association is enacted by the

15 Ust. 15.2.1962 o obywatelstwie polskim, Dz.U. 2000, Nr 28, poz. 353.

16 Ust. 7.4.1989 Prawo o stowarzyszeniach, Dz.U. 2001, Nr 79, poz. 855.

17 Ust. 17.5.1989 o gwarancjach wolności sumienia i wyznania, Dz. U. 2005, Nr 231, poz. 1965 .

18 Ust. 7.9.1991, o systemie oświaty , Dz.U. 2004, Nr 256, poz. 2572.

19 Ust. 13.6.2003 o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej, Dz.U. 2009, Nr 189, poz.1472.

20 Ust. 12.3.2004 o pomocy społecznej, Dz.U. 2009, Nr 175, poz. 1362.

21 Ust. 20.4.2004 o promocji zatrudnienia i instytucjach rynku pracy, Dz.U. 2008, Nr 69 poz. 415.

22 Ust. 20.04.2004 o promocji zatrudnienia i instytucjach rynku pracy, Dz.U. 2005, Nr 164, poz. 1365.

23 Zespół do Spraw Migracji, *op. cit.*

24 Konstytucja Rzeczypospolitej Polskiej 2.4.1997.

Law on Associations of 7 April 1989, which defines an association as a “voluntary, self-governed and permanent organization, set up for non-profit purposes [Art.2(1)]. Under this Law, while all foreigners may join existing associations (as long as their statutes allow this), only permanent residents of Poland may form such associations.²⁵ Article 4 stipulates that a non-national should be permanently registered in a district on Polish territory prior to establishment of an association. This restriction does not apply to foundations, which may be formed under a separate law by all persons, regardless of their residence status. The only requirement is that a foundation needs to be located in Poland.²⁶ However, the term “to become members of associations” used in the Law with regard to foreigners is imprecise and could be interpreted narrowly as “to participate in” rather than “to establish”. This restriction was criticized for that it unduly limited the application of the constitutional principle and was the contravention of the European Convention of Human Rights.

Article 59 of the Constitution guarantees freedom of membership in trade unions and employers, associations, stipulating that the scope of this guarantee must not be limited by statutory law other than in cases dictated by international commitments. The Law on Trade Unions grants the right to form and join trade unions to all “employees regardless of the form of their Employment”.²⁷

Membership of political parties is restricted under the Polish Constitution to nationals (Art. 11).²⁸ This restriction is reiterated in the Act on Political Parties of 27 June 1997, where Article 2 states that, membership of political parties is open to citizens of the Republic of Poland.²⁹ In the matter of the expression of direct ban on participation

25 Ust. 7.4.1989 Prawo o stowarzyszeniach, Dz.U. 2001, Nr 79, poz. 855.

26 *Ibidem*.

27 Konstytucja Rzeczypospolitej Polskiej 2.4.1997.

28 Konstytucja Rzeczypospolitej Polskiej 2.4.1997.

29 Ust. 27.06.1997 o partiach politycznych, Dz.U. 2011, Nr 155, poz.924, A. Bodnar, *Piąty raport Komisji Europejskiej o obywatelstwie UE. V konieczność zmiany ustawy o partiach politycznych*, [European Commission's Fifth Report on Citizenship of the Union, V the necessity of amending the Law on political parties] posted on 23.6.2008 on the website of the project Prawa człowieka w orzecznictwie sądów polskich [Human rights in Polish courts rulings], <http://www.prawaczlowieka.edu.pl/index.php?dok=e794a80eb109162d579df51db6d52e223bb0e9be-d3>, [online 21.2.2012].

in political parties the Act on Political Parties refers to specific regulations. However, the restriction that only citizens of the Republic of Poland may be the members of political parties indirectly introduces the implied ban on participation of foreigners who do not possess the Polish citizenship in political parties.

The Polish regulations assume active participation of political parties in municipal and European Parliament elections however the Constitution and the Act on Political Parties do not admit citizens of member states to associate in such organisations. To execute their voting rights the EU citizens who reside permanently in the member state but are not the citizens of this member state should have the right to join political parties. The fact that foreigners cannot execute their rights in this matter at the local level infringes the provisions of community law and threatens the essence of voting rights hence the basic assumptions of the institution of EU citizenship.³⁰

The Law on Association introduces a wider access for foreigners to form associations. The principal rule is that under Art.3 (1) the right to form associations is vested in Polish citizens who have full capacity to conduct legal transactions and who have not been deprived of public rights. The rights granted to foreigners are stipulated in Art. 4 (1) which states that foreigners who are residents of the Republic of Poland may associate under the law binding on Polish citizens. Foreigners who are not residents of the Republic of Poland may join these associations whose charter stipulates so.³¹

The works on introducing this regulation were very stormy. The amendment draft of the Act on Associations which was submitted in November 2012 cancelled the limitations on forming and maintaining associations by foreigners. The draft did not distinguish between foreigners and citizens of the state, extending the right to form associations for all natural and legal persons. However, due to massive

30 M. Dąbrowski, *Obywatelstwo polskie a obywatelstwo Unii Europejskiej*, „Państwo i Prawo” 2005/2, pp. 64–77.

31 Ust. Prawo o stowarzyszeniach.

criticism from civic society the draft was withdrawn by its creators.³² Soon after that the act was amended to the present version.

The scope of rights granted to foreigners on political participation has provoked disputes and controversies since the very beginning of Poland's membership in the EU. A group of nationalist MPs submitted a query to the Constitutional Tribunal regarding the constitutionality of the extension of the right to take part in elections to the European Parliament to nationals of EU member states residing in Poland. The Tribunal ruled the extension of constitutional rights in its verdict of 31 May 2004, in which it upheld the right of nationals of EU member states to take part in EP elections as one of their fundamental rights and rejected the interpretation that only EU nationals may be members of the European Parliament as "representatives of Nations of Member States".³³

The Tribunal considered Art. 4 (1) of the Constitution cited by the movers inappropriate to evaluate the constitutionality of the challenged provisions. The principle of supreme power of the nation (perceived in a political sense i.e. all citizens of the Republic of Poland) included in Art. 4 (1) of the Constitution refers to sources and mechanisms of the authority in the Republic of Poland. This principle cannot however be applied to the European Parliament – the body functioning within the structure of the European Union, which does not exercise the authority in the Republic of Poland.³⁴

The Tribunal also stated that admitting the European Union citizens who are not citizens of the Republic of Poland to vote and stand as a candidate at the European Parliament elections is confined within the regulatory freedom of legislator. Simultaneously, the Constitutional Tribunal emphasized that the right to vote and to stand as a candidate enacted in the challenged provisions is not absolute. Certain prerequisites like formal declaration to participate in elections or being a permanent resident of the Republic of Poland need to be fulfilled

32 Nic o Nas bez Nas, Partycypacja społeczna i prawa polityczne imigrantów, <http://www.isp.org.pl/uploads/filemanager/Niconasbeznas.pdf>, [online 19.7.2012].

33 Wyr. Trybunału Konstytucyjnego 31.5. 2004, Sygn. akt K 15/04, http://www.trybunal.gov.pl/rozprawy/2004/Dz_Ustaw/k_15s04.htm, [oline 20.7.2012].

34 *Ibidem*.

to execute this right fully. According to the Tribunal, the electoral law constructed in this way is in conformity with the provisions of community law.³⁵

At present the rules of the right to be elected and the right to vote are determined by the Electoral Code.³⁶ In accordance with its regulations, the right to elect members of Sejm and the Senate as well as the President of the Republic is vested in a Polish citizen³⁷ who at the latest on the day of election attains the age of 18. This regulation refers the right to elect directly to Polish citizens (no foreigner being a citizen of a third country or the European Union has the right to vote).

In elections to the European Parliament in the Republic of Poland the right to vote is vested in the Polish citizen who at latest on the day of election attains the age of 18 and the citizen of the European Union, who is not a Polish citizen, who at latest on the day of election attains the age of 18 and is a permanent resident of the Republic of Poland. In this case the right to vote was granted to citizens of the European Union but with the condition of simultaneous permanent residence on the territory of the Republic of Poland.

The right to be elected is vested in:

- a) in Sejm elections: a Polish citizen who has the right to vote in this election and who at latest on the day of election attains the age of 21;
- b) in Senate elections: a Polish citizen who has the right to vote in this election and who at latest on the day of election attains the age of 30;

35 *Ibidem.*

36 Ust. 5.1.2011 Kodeks wyborczy, Dz. U. Nr 21, poz.112.

37 In accordance to the Polish legal regulations, the Polish citizenship depends on fulfilling certain conditions, which in turn indicates that s/he who fails to meet these conditions will be regarded as a foreigner. The Polish citizenship may be granted to a person whose parents have such citizenship (or else one of the parents is a Polish citizen and the other is unknown or his/her citizenship is undefined, or has not citizenship). A foreigner may be, on his/her request, granted the Polish citizenship if he/she has been a resident of the Republic of Poland for at least 5 years on the basis of a settlement permit, European Communities long-term residence permit or the right of permanent residence. In special justified cases a foreigner may be granted the Polish citizenship on his/her request, even if he/she fails to meet the conditions in point. Granting the Polish citizenship may depend on the submission of the proof of the deprivation or exemption from the foreign citizenship.

- c) in elections for the President of the Republic: a Polish citizen who at latest on the day of election attains the age of 35 and is entitled to all rights in Sejm elections;
- d) in elections for the European Parliament in the Republic of Poland: a person who has the right to vote in these elections, who at latest on the day of election attains the age of 21 and has been a resident of the Republic of Poland or another European Union member–state for at least 5 years.

The aforementioned implies that the right to be elected is mainly vested in Polish citizens with an exception of extending it in the case of European Parliament elections.

Voters are placed in the permanent register of voters including permanent residents of the commune, in whom the right to elect is vested, with the reservation that they can be counted in one register of voters only.³⁸

With the application for the entry in the register appropriate documents must be enclosed, including a declaration in which the applicant gives his/her address of permanent residence. Neither the directive nor the Electoral Law for the European Parliament, or even the Electoral Code did not define the term “permanent residence”. The resolution of the Constitutional Tribunal of 21 August 1991 established that: “permanent residence on the territory of the Republic of Poland for at least 5 years means a stay with the intention of permanent residence in any town/village on the territory of the Republic of Poland in this period. Permanent residence is a question of fact and its determination depends on the circumstances of a particular case”.³⁹

The permanent register of voters includes persons who are permanent residents of the territory of the commune, who are entitled to elect. The register of voters makes a collection of personal data from census records. One person may be included in one register of voters only .The register of voters serves to prepare lists of electors entitled to participate in elections as well as to prepare lists of people entitled

38 Ust. Kodeks wyborczy.

39 Uchw. T.K. 21.08.1991, W. 7/91, OTK w 1991, poz. 24.

to participate in referenda. The register of voters confirms the right to elect and the right to be elected. The register of voters is divided into part A and part B. Part A of the register of voters includes Polish citizens. This part of the register of voters lists the voter's surname and forename(s), father's forename, date of birth, PESEL number and the address of residence. The voters who are Polish citizens registered on the territory of the commune as permanent residents are entered in the register of voters ex officio. Part B of the register of voters includes the citizens of the European Union who are not Polish citizens, who are permanent residents of the commune and entitled to electoral rights in the Republic of Poland. This part of the register lists the elector's surname and forename(s), father's name, date of birth, citizenship of the EU member-state, passport number, or any other identity card, and the address of residence. The commune keeps the register of voters. The register of voters is available, on written request, for inspection in the commune office. The commune office passes adequate electoral bodies periodic information on the number of electors in the register of voters.⁴⁰

The voters permanently living on the territory of the commune without being registered for a permanent residence are entered in the register of voters if they submit a written application for it. The application should contain the applicant's surname, forename(s), father's name, date of birth and the PESEL number. The rule § 1 is appropriately applied to the voter who resides nowhere, staying permanently on the territory of the commune. The voters who live permanently on the territory of the commune at the address different from the address of their permanent residence registration on the territory of this commune may be entered in the register of voters at the address of their permanent residence if they submit an application for it in the commune office along with pointing at the address of their last permanent residence registration on the territory of the commune.

The decision on entering or declining entering a person in the register of voters is issued by the wójt (head of the commune), within 3 days from the day of application. The decision on declining entering in

40 Ust. Kodeks wyborczy, Art. 18.

the register of voters, along with justification, is immediately delivered to the applicant.

The wójt, before announcing his/her decision, is obliged to check whether the applicant for entering in the register of voters meets the conditions of permanent residence on the territory of the particular commune. The entering of a voter in the register of voters is immediately notified to the commune office proper for the last place of registered permanent residence of the applicant in order to cross him/her out of the register of voters in that commune. There is a right to appeal to the locally proper district court of law against the decision on declining entering in the register of voters. The complaint is submitted through the wójt within 3 days from the day of the decision delivery. The wójt passes on the complaint together with the decision and the case files to the court. The wójt may also immediately change or revoke his / her decision if s/he recognises the complaint as wholly justified. The court recognises the complaint in non-litigious proceedings within 3 days of its delivery. The copy of the decision of the court is delivered to the person who filed the complaint as well as the wójt. The decision of the court is not subject to legal appeal. Everyone can file a complaint to the wójt against inaccuracies and errors in the register of voters, especially in the case of:

- 1) omission of the voter in the register of voters,
- 2) entering in the register of voters a person who has no right to vote,
- 3) inaccurate data on persons who have been entered in the register of voters,
- 4) including in the register of voters a person who is not a permanent resident of the commune.

The complaint is entered either in writing or orally in the official record. The wójt is obligated to consider the complaint within 3 days of its submission and make a decision on it. The decision, along with its justification, is immediately delivered to the complainant, and if it concerns other people, also to those people. The decision not allowing the complaint or resulting in crossing out of the register of voters the

complainant or the person crossed out of the register of voters may file a complaint through the wójt to the competent local district court within 3 days from the date the decision was delivered.

The minister competent for internal affairs passes on to competent organs of member–states of the European Union, on their request, data concerning Polish citizens intending to exercise the voting rights on the territory of another member state of the European Union in the range indispensable for exercising these rights.⁴¹

As aforesaid, a citizen of the European Union who is not a Polish citizen deprived of the right to vote in a member–state of the European Union of which he/she is a citizen, does not have the right to elect. Additionally, one may demand a statement that foreigners who do not hold public posts in their homeland, which would be incompatible with holding the position for which they apply in the country of residence. Finally, it is important to emphasise that citizens of the EU so far have not exercised the aforementioned rights very willingly. The attendance of EU citizens in local and European Parliament elections outside the country of origins does not exceed 30–40%, which is the result of both internal solutions of member states and access to information on the part of the potential voters. On the other hand, these numbers are not significantly far from the attendance of EU citizens voting in their own countries, which means that the problem concerns generally participation in elections (particularly just local and EP elections), and not the disadvantages in point.

Poland is not among those EU member states which have long experience with the presence of immigrants. The population of immigrants in Poland consists foremost of the first generation immigrants. The number of naturalised immigrants remains inconsiderable. In the years 2002–7 the Polish citizenship was granted to mere 10.140 people. According to the calculation of the Central Statistical Office, the number of immigrants temporarily residing in Poland (3 months or longer) on 31 December 2006 was estimated at 200.000 (of which the main group was made up by the Ukrainians).

41 Ust. Kodeks wyborczy, Art. 25.

60.000 of these immigrants lived in Poland longer than 12 months.⁴² According to the OECD data, the level of immigration to Poland still remains very low. Towards the end of 2007 foreigners made up 0.15% of the population of Poland. The three main groups of immigrants are the Germans, the Ukrainians and the Russians.⁴³

The low number of foreigners also affects the directions of the policies of the Council of Ministers. The response of the undersecretary of state in the Ministry of Interior and Administration, authorised by the president of the Council of Ministers, to the interpellation on granting a broader range of civil rights to immigrants from the countries which are not members of the European Union, indicated that in the question concerning studies on people's migrations we should take into consideration both the specificity of the migration as well as internal determinants of the particular country. The situation is definitely different in the countries where the share of foreigners approximates or exceeds 10% of the population from the situation of such countries as Poland, where, according to the latest Eurostat data, this share amounts to 0.1%.⁴⁴

Poland is still treated by most of the immigrants arriving there as a transit country, the entry to which gives them a possibility of further movements within the Schengen Area. This state of affairs contributed to the lack of many solutions in this matter, particularly in the integration policy. Over the last years the phenomenon of circular migration to Poland, mainly from the neighbouring countries has been observed. Thus, circular immigrants are not interested in the integration with the Polish society, because they treat their stay on the Polish territory as temporary. The number of the immigrants who decide to settle in Poland, in comparison with the Western European countries, is not considerable. Poland is defined as a country "awaiting immigration".

42 K. Gmaj, K. Iglicka, *Projekt Badawczy EMILIE Wyzwania polityczne wynikające z migracji związane z różnorodnością: przypadek Polski*, http://emilie.eliamep.gr/wp-content/uploads/2009/11/emilie_political_rights_policy_brief_poland_pl.pdf, [online 26.8.2012].

43 Poland, SOPEMI Country Notes 2009, www.oecd.org/dataoecd/42/34/44068046.pdf, [online 25.8.2012].

44 The response of the undersecretary of state in the Ministry of Interior and Administration, authorised by the President of the Council of Ministers, to interpellation no. 24326 on granting a broader range of civil rights to immigrants from the countries which are not members of the European Union, <http://orka2.sejm.gov.pl/IZ6.nsf/main/748CA4FC>, [online 10.10.2011].

This stems from the hitherto existing situation. In contrast to most of other European countries, Poland has not developed a policy towards immigrants, which would be a response to the presence of the immigrants, but the regulations binding in Poland result from the need for adjusting the national legislation to that of the Union and fulfilling the obligations which result from belonging to the EU structures.⁴⁵ This situation is a consequence of Poland not facing the challenge which is brought by dynamic and large immigration as well as the presence of the citizens of third countries. The changes introduced in the recent years are certainly considerably connected with the adjustment to the EU legislation but many circles have noticed a need for a constructive debate and the development of Polish bases of the integration policy.

Immigrants also fail to show any significant interest in participating in public life. They are mainly occupied with their work as well as burdensome procedures of legalisation and prolongation of their stay. The time dedicated to work and formalities is an important factor discouraging them from any additional, including that political, involvement. The majority of immigrants do not settle in Poland for good. Their incomes are not sufficient to bring here their families. Circular migration is a frequent phenomenon. The immigrants employed in the gray market make efforts to be completely invisible.⁴⁶

The passivity of foreigners in political life is also affected by the political culture of their countries of origin. Among the population of the immigrants arriving in Poland dominate those who come from the countries where they had little or no experience with democracy at all (former Soviet countries and Vietnam). This lack of experience in the sending countries is strictly connected with the lack of involvement in the receiving country.

The size of the immigrant population in Poland is still not large. Consequently, politicians do not perceive immigrants as a group of potential voters and are not interested in providing them with political rights. In Poland there are no formal political mechanisms which

45 A. Weinar, *Europeizacja polskiej polityki wobec cudzoziemców 1993–2003*, Warszawa, 2006, p. 222.

46 K. Gmaj, K. Iglicka, *op. cit.*, p. 2.

would provide a forum for consultations and dialogues between elected representatives and representatives of foreigners. In Poland immigrants have no political rights. Citizens of foreign countries and the stateless cannot participate in national elections. People who have a temporary residence permit or a settlement permit enjoy the freedom of association on the same conditions as the Poles. Those without the residence permit may join unions and organisations if their charters provide so. Immigrants do not raise the question of political rights enabling them to participate in local elections. Taking into consideration the low number of the foreigners and the fact that they are busy doing other things (foremost legalising their stay and work permit), there is no indication that this question will be touched upon in the nearest future.

In 2005 for the first time a naturalised immigrant was elected to the Polish Parliament. He came from Bangladesh and had lived in Poland for over 30 years. There were a few cases of the election of naturalised citizens for councillors. Their election was not a result of an ethnic support. These people enjoy respect from local communities. However, such an activity among the naturalised people is exceptional.

So far the conditions leading to a considerable involvement of immigrants from third countries in political and civil fields are in Poland yet to emerge. Although the immigrants interested in active participation in political life are exceptional, we may assume that the situation will change when the economic conditions improve and the number of immigrants increases. It is possible that when the second generation appears on the stage and the procedures legalising residence are not such an important part of the immigrants' lives, they will become interested in active participation in political life and benefitting from democratic procedures. For the development of the Polish economy, which over the last decade, as the result of emigration, experienced the "brain drain", encouraging immigrants to come is one of important questions.⁴⁷

In the aforementioned reply to the interpellation the Ministry points at actions taken in order to improve the situation. On 20

47 K. Gmaj, K. Iglicka, *op. cit.*, p. 4.

July 2011 the inter-ministerial Committee on Migration adopted a document titled “Migration Policy of Poland – the current state of play and the further actions”, which was developed by the Chancellery of the Prime Minister of Poland. The aforementioned document embraces almost all theme areas which are a subject of the MIPEX report and includes recommendations on the extension of foreigners’ rights as well as increasing their share and importance in the community and economic life of Poland, including, for example, recognising the foreigners studying in Poland as a special group of people who should be treated preferentially; proposing simplification of the legal and institutional system, especially in the field of residence legalisation, increasing the access to education and enhancing actions for improving the situation of refugees. One of the chapters of “The Migration Policy of Poland” is dedicated to the problems of foreigners’ integration, which was a subject of particular consultations with non-governmental organisations within the framework of the consulting platform, created by them, which was coordinated by Caritas Poland. The proposals of the platform were largely taken into consideration, for example through proposals of actions in a few system areas:

- adopting comprehensive solutions in relation to the integration of the foreigners who remain outside the system of international protection, assuming voluntary participation in integration programmes, with a simultaneous “system of stimuli” encouraging to participate in the programmes, also allowing for a possibility of obtaining the Polish citizenship;
- support from local institutions through providing good practice and including into platforms of cooperation with the local communities which already have a better experience in contacts with migrants;
- planning integration actions in such a way that they are not perceived through the prism of benefits within the welfare system. The welfare system is an institution of the social policy of the state aiming at enabling people and families to overcome difficult life situations. Generally the objective of integration should be leading to the possibility of the foreigner functioning in-

dependently in Poland, including work market and the foreigner freeing himself from social benefits and welfare system;

- increasing the range of cooperation with immigrant environments;
- consulting the action concerning foreigners with representatives of migrants and non-governmental organisations;
- securing the role of the state in providing information on the conditions of legal work and residence in Poland; this role may involve preparing appropriate information packets, direct information (which is connected with an accurate training of the office workers) as well as financing, coordinating and monitoring substantive programmes developed by local governments and other community entities;
- considering a possibility of beginning a discussion on granting foreigners voting rights on the level of local government in the case of the people with residence permit of unlimited duration on the territory of Poland;
- constructing locally designed programmes of “showing round the house” and “welcome packets” for newcomers.⁴⁸

The policy of foreigners’ integration is also a subject of intense work of the Working Group for Integration, working within the framework of the aforesaid team, which began in 2011 under the Ministry of Labour and Social Policy.

It is also important to point at the solutions included in the plan of principles of a new law on foreigners, which was adopted by the Council of Ministers on 16 August 2011.

The planned regulation aims at, among other things, simplification of procedures of legalisation of foreigners’ residence. The plan adopts a possibility of a foreigner applying for one permit, both for temporary residence and work in Poland. It also suggests prolongation of the longest period for which the temporary residence permit for foreigners will be granted, from two to three years. Moreover, a foreigner will be

48 Zespół do Spraw Migracji, *op. cit.*

allowed to apply at a moment convenient for him/her during his/her legal residence.⁴⁹

Particularly bearing in mind the difficult legal and humanitarian situation of the people of an unregulated status, the government prepared a law on legalising the residence of some foreigners on the territory of the Republic of Poland as well as the change of the Act on Providing Foreigners with Protection on the Territory of the Republic of Poland and the Act on Foreigners, which was passed by Sejm on 28 July 2011.⁵⁰ Since 1 January 2012 the foreigners who stay in Poland illegally have an opportunity to legalise their residence in accordance with the provisions of the aforesaid act of law. The basic requirement of granting them a residence permit of limited duration will be a continuous stay in Poland since at the latest 20 December 2007. Within the so-called abolition on the residence legalisation also those foreigners who before 1 January 2010 received a final decision on declining granting them the refugee status and on their expulsion will be allowed to apply. The residence permit of limited duration will be granted for 2 years and not, as previously, for one year. Within the two years the foreigner will be allowed to be employed on the basis of an employment contract without applying for appropriate permits. Moreover, the legislator waived the requirement of the foreigner possessing sufficient means of subsistence and producing the entitlement to the residential premises s/he occupies.

3.3. Participation of foreigners at a local level

Amendments to the Law on Local Elections, which came into force on 1 May 2004, have extended both active and passive rights in local

49 The response of the undersecretary of state in the Ministry of Interior and Administration, authorised by the President of the Council of Ministers, to interpellation no. 24326 on granting a broader range of civil rights to immigrants from the countries which are not members of the European Union, <http://orka2.sejm.gov.pl/IZ6.nsf/main/748CA4FC>, [online 10.10.2011], Ust. 27.4.2012 o zmianie ustawy o cudzoziemcach oraz ustawy o promocji zatrudnienia i instytucjach rynku pracy, Dz.U. poz. 589.

50 Ust. 28.7.2011 o zalegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach, Dz.U. Nr 191, poz. 1133.

council elections to citizens of EU member states residing permanently in a particular district. This amendment was a minimum requirement for the EU accession. Poland might, however, consider the fact that non-EU nationals may vote in local elections in 19 European states. Even the limited extension of voting rights to some foreigners faced some political opposition.

In the case of local elections at the basic level Council Directive 94/80/CE introduced detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the European Union residing in a member state of which they are not nationals and at the same time construing the principle of domicile and additionally admitting in Art.5, firstly, that they may be precluded from that right if they have been deprived of their right to vote and stand as a candidate in the country of origin⁵¹. Secondly, the possibility to make reservation that only the nationals of these member states may hold the office of elected head, deputy or member of the governing college of the executive of a basic local government unit. In addition, member states may stipulate that the citizens of the EU elected as members of a representative council do not take part in either the designation of delegates who can vote in a parliamentary assembly or the election of the members of that assembly. Finally, as far as the conditions of holding offices are concerned the directive stated that the conditions are the same as under the law of the state of residence for their own nationals but they can be extended to holding offices in other member states but falling under the ban of holding two offices in the state of residence.

Taking into consideration the aforementioned provisions citizens of the EU were granted some rights in the scope of active and passive voting rights by the Polish legislator.

As regards the elections for authorities of the local government units, at the elections for commune councils the right to vote is granted

51 Council Directive 94/80/EC of 19.12.1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals, Dz.U. L 368 z 31.12.1994, pp. 38–47.

to Polish citizens and citizens of the European Union who no later than on the day of the elections have attained the age of 18 and reside permanently in the area of this particular commune. In the case of the elections for the councils of powiat and voivodeship parliament Polish citizens who no later than on the day of the elections have attained the age of 18 and reside permanently on the territory of the powiat or voivodeship respectively, are eligible to vote whereas. In the elections for the office of wójt in a particular community, a person who has a right to vote for candidates for the council of this particular commune.⁵²

The right to be elected is vested:

- a) in elections for authorities of the local government units (the commune councils, the councils of powiat and voivodeship parliament): person who has the right to vote in this election;
- b) in elections for the wójt: a Polish citizen who at latest on the day of election attains the age of 25 and has a right to vote in this election (also he doesn't have to reside permanently in the area of this particular commune);⁵³

30 million 590 896 Poles were eligible to vote in local government elections in 2010 on 31 October 2010. 403 citizens of the European Union enrolled on their own request. As it was mentioned before, they had the right to vote and to stand as a candidate in the elections for commune councils, but in the elections for wójts, mayors, presidents of the cities they could only vote. 12 foreigners (the citizens of Bulgaria, Denmark, two people from the Czech Republic, Slovakia, France, and three people from Germany) stood as a candidate.

In local-government elections in 2010 the Poles elected 46, 809 members of the councils at all levels i.e. at commune, powiat, voivodeship, City of Warsaw and 18 districts of the capital city. Also almost 2.5 thousand (2,479) city hosts were chosen: 1,576 wójts 796 mayors, and 107 presidents of cities. 34 electoral committees registered by the State Electoral Committee and 12,478 electoral committees accepted by electoral commissioners participated in the elections. In

52 Ust. Kodeks wyborczy, Art. 10. § 1.

53 Ust. Kodeks wyborczy, Art. 11. § 1, pkt. 5,6.

general, 23,101 constituencies (including, for the elections for the voivodeship parliament – 87 constituencies, the powiat councils – 1345 constituencies, the commune councils 21,599) were formed in the territory of the country.⁵⁴

There are several dozens of social organisations providing assistance for foreigners in Poland, which mainly thanks to the European Union ancillary funds perform their tasks both in the area of legal counselling and financial, material, psychological support. The authorities of public administration are in touch with the majority of these organisations, which helps to exchange opinions and react appropriately to current problems. Today there are however no formal structures which would enable immigrants to affect political decisions taken at the local and central levels. Foreigners' Forum established in 2008 by the Mazowiecki Voivodeship Office was an attempt to create a platform which would enable foreigners to express their opinions before the national authorities. Yet, in practice the Forum mainly gathers the Poles working in NGOs and in other institutions which deal with immigrants. In Poland there are no political parties formed by immigrants and the issue of voting rights at the local level for non-EU citizens is not included in the platforms of political parties. Foreigners are not perceived as a potential group of voters of main political parties, which is in a sense understandable due to its limited number on the territory of the Republic of Poland.

So far immigrants' associations founded by the Vietnamese have been most visible and have achieved most success. Their activities are mainly aimed at self-help and preserving ethnic and cultural identity. In their case the contacts with other immigrants from the same country are the result of alienation in the receiving society. Immigrants coming from Africa and Near East also carry out social and cultural activity but the extent of their organisations and intensity of their activities cannot be compared to that of the Vietnamese organisations.⁵⁵

54 Co powinniśmy wiedzieć o niedzielnych wyborach samorządowych, http://www.gazetaprawna.pl/wiadomosci/artykuly/466314,co_powinnismy_wiedziec_o_niedzielnych_wyborach_samorzadowych.html, [online 19.11.2010].

55 K. Gmaj, K. Iglicka, *op. cit.*, p. 4

4. POLITICAL PARTICIPATION OF FOREIGNERS IN THE FEDERAL REPUBLIC OF GERMANY

4.1. Integration policy in the Federal Republic of Germany

According to MIPEX data of 2007, as far as political freedoms of immigrants are concerned, Germany uses one of the best practices. Immigrants who legally stay in Germany may form associations and join political parties. Migrants who do not have citizenship however cannot vote and stand as a candidate in elections. As regards counselling of the government representatives with representatives of immigration circles the situation differs depending on land but is at quite high level.

Also in 2011 MIPEX report Germany was placed in the group of countries which have high level of political participation and developed migration policy. In accordance with MIPEX report of 2011 in this major country of immigration and emigration, immigration and asylum have long declined since 1995. Newcomers' integration policies little improved in three years, but are halfway favourable, and comparable to other major immigration countries. Germany scores average for Europe on education and family reunion policies, but far below on equality policies and long-term residence conditions. 2007's EU-Richtlinienumsetzungsgesetz aimed both to demand and promote real participation in society. Indeed, a more objective citizenship test may help naturalisation rates rise and converge across Germany. However, new German tests abroad may demand more than spouses can do abroad. The effect may not promote couples' integration, but rather undermine family reunions. Test scores may be poor indicators of immigrants' many harder-to-measure skills and aspirations to integrate in Germany. Future research can assess these findings.

MIPEX saw Germany's policies improve through public evaluations (e.g. courses) and partnership with länder and NGOs (e.g. National Action Plan). Still, immigrants are better consulted at regional/local than national level. Areas like education see more intentions and well-evaluated projects than actual entitlements. Changes often require authorities cooperate to reach national consensus.¹

MIPEX report indicates the following actions as characteristic and detailed solutions:

- Average education policies: more ad hoc funding/projects than entitlements in länder;
- Most professional 'citizenship test', but language levels may be too high to pass;
- Discrimination law undermined by weak equality bodies/commitments, most countries give better help to potential victims;
- Clear path to citizenship like major countries of immigration;
- Some of best targeted measures for labour market integration, except in recognising qualifications;
- German tests abroad for spouses may facilitate or discourage integration in Germany;
- Secure residence and equal rights for families, as in Northern Europe;
- Most restrictive conditions for long-term residence in Europe or North America;
- Foreigners have some political opportunities at local/regional level, but not in elections or national politics.

In the area of political participation the report underlines that Germany, like most established immigration countries, provides newcomers some political opportunities, but few in democratic or national politics. Since 1994, it is clear that voting rights (as in 19 MIPEX countries) would require political will for constitutional change (see also Austria, Italy, Spain, Portugal). In the meantime, some

1 <http://www.mipex.eu/germany>, [online 15.8.2012].

political parties exclude non-nationals from internal posts. Non-EU nationals enjoy individual political liberties (as in 19), including the right to join parties. They also enjoy civil society support to represent their interests. Immigrants are better consulted by municipalities and länder than by the national government. Their structural, independent and elected bodies are favourable models for future national conferences on integration.²

The German integration policy (including the political participation) has changed its image over the years. Integration is a task for the whole community. Successful integration processes have an impact on many aspects of life, for example labour market and general social climate in Germany. It is important to underscore the influence of the migration and integration policies on many aspects of life, both economic and political.

The Federal Office understands the term integration as equal participation of immigrants in all fields of social coexistence with respecting the social diversity. The aim of supporting integration by the Office is a peaceful coexistence of the immigrants and the local people. Among the central principles of supporting integration are the principle of “support and demand” as well as “resource orientation”. Support and demand is based on the assumption that integration is a mutual process requiring efforts from both the receiving society of the receiving state as well as on the part of the immigrants. Specifically, this means that the receiving society presents to the immigrants offers of support for integration, particularly in the domain of language support, consulting, professional and community integration. The immigrants, on the other hand, are expected to accept such offers as their own initiative and in this way they will contribute to their possibly soonest integration in the new homeland. The term “resource orientation” is understood as a principle of deliberate supportive actions depending on the immigrants’ individual competences and skills, and not supporting integration as levelling alleged deficits. Thus, for example, supporting integration

2 <http://www.mipex.eu/germany>, [online15.8.2012].

should begin with education, qualifications and professional experience of the person concerned.³

Along with the Immigration Act of 1 January 2005 the Federal Republic of Germany commenced such a systematic integration policy. With the introduction of integration courses, for the first time in the history of the Federal Republic there is a nationwide uniform offer of tentative support for new immigrants. In Germany the integration policy towards immigrants began to form relatively recently.⁴ A reflection of the approach towards immigrants is the term they used to be called: “Gastarbeiter”. Since recently Germany (as well as Holland) introduced the obligation of integration courses and the German language lessons, whereas the German citizenship, which is connected with the acquisition of all rights, including those political and public, is available after 8 years of legal residence in Germany.⁵ To have access to civil rights, welfare system, education and labour market it is enough to possess a legal status of residence. No federal register of structures and of number of immigrant organisations exists. Such a register was prepared in 1999 in North Rhine–Westphalia. 2,200 organisations were identified. It was noted that year by year the immigrant organisations become more and more professional. Foreigners group in organisations by ethnicity, language and religion. The existent organisations were characterised as religious (particularly numerous Muslim organisations and unions), cultural, political, sport and recreational, family and parental, immigrant and integration organisations and unions.⁶

Foreigners permanently residing in the Federal Republic of Germany make no homogenous group. The groups of immigrants may be classified according to different criteria. For Germany the best seems the division according to the country of origins, the aim of immigration as well as the degree of integration of the immigrants in the receiving country. Almost 1.7 million immigrants are people of Turkish origins.

3 O. Steinert, *Integrationsförderung in Deutschland. Die Aufgaben des Bundesamtes für Migration und Flüchtlinge*, (in:) L. Schmahl, “Integration von Migranten. Intentionen, Programme und Perspektiven”, Brühl/Rheinland 2007, p. 28.

4 *Ibidem*, p. 27.

5 M. Ziola, *op. cit.*, p. 21.

6 Ch. Müller–Hofstede, *Migrantenorganisationen*, www.bpd.de/themen/BFIGW3.html, [online 27.7.2012].

The second most numerous ethnic group are the Italians (over 500 thousand people), and the third the Poles (almost 400 thousand people). The Turks, the Italians and the Poles make up nearly 40% of the general population of immigrants permanently residing in Germany. They are mainly economic immigrants and their descendants.⁷

The form of the German migration policy is foremost determined by the provisions of international law, the European Union law and national legislation. Also the Immigrant Act (*Zuwanderungsgesetz*) adopted in January 2005⁸ was of high importance. It regulates the influx and the right to residence of foreigners on the territory of the FRG, along with sets ways of integration of the citizens of the European Union member–states, as well as citizens of third parties. The German federal government bases its migration policy on a cooperation with the Lands. This policy focuses on such points as:

- integration of foreigners living in Germany legally and permanently is treated as a clue socio–civil issue for the state at all its levels (federation, Lands, and municipalities). An extensive programme of cooperation determines numerous means which support integration as well as activate circles of foreigners as well as require from them an active contribution in the process of their integration with the German society,
- the migration policy is supposed to take into consideration economic and developmental needs of the FRG society. For this purpose wide public consultations between representatives of the Ministries of Interior of federal lands are held. The federal government regulates the influx of foreigners within the framework of the programmes: mobile partnership (*Mobilitätspartnerschaft*), circular migration (*zirkuläre Migration*), regulated and voluntary emigration of foreigners within the REAG/GARP programme (*Reintegration and Emigration Programme for Asylum–Seekers In Germany/Government Assisted Repatriation Programme*),

7 M. Szaniawska–Schwabe, *Polityka imigracyjna Republiki Federalnej Niemiec*, „Przegląd Zachodni”, 2009, no 4, p. 6.

8 *Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern*, (in:) “Bundesgesetzblatt” I 2004, No 41 5.7.2004, p. 1950.

- fulfilling humanitarian obligations to international community in accordance to international and national laws within the framework of the broad social dialogue (agreed on between the federation and the federal lands in the question of receiving persecuted Christians from Iraq),
- guaranteeing the state and the citizens' security in connection with the spreading phenomenon of international terrorism and illegal migration, for example forcing, against the position of certain federal lands, solutions extending the competences of the Federal Criminal Office (Bundeskriminalamt) as well as signing special agreements on taking over the illegal immigrants expelled from the territory of the FRG by the countries of origins.

The Federal Ministry of Interior has a task to seek strengthening the role of the federation and the services responsible for taking final decisions as well as for coordinating the cooperation within the framework of the migration policy of the FRG.

Despite so many integrated actions one can also hear opinions that in the FRG a “comprehensive and organised immigration policy” has not been formed yet.⁹ A group of experts argue that the German political elites proceed on the assumption that integration is part of a private sphere and therefore no government regulation is necessary. Others underscore that the conceptual deficits result from an artificially maintained assumption, that Germany is no immigration country (Deutschland ist kein Einwanderungsland). Certainly the German policies have always been labour–market oriented, as a result of which in the FRG crystallised a special model of immigrant policy, economic immigration oriented (Gastarbeitermodell), and complemented with elements of the classical immigration conceptions: pluralism and assimilation.¹⁰ In view of the priority of economic policy, the aspects of cultural and social integration have long played a secondary role.

9 M. Adamowicz, *Współpraca rządu federalnego RFN z krajami związkowymi w sferze polityki migracyjnej*, (in:) M. Kulesza, M. Sakowicz (ed.), „Współdziałanie administracji rządowej i samorządowej w Unii Europejskiej”, Warszawa, 2009, pp. 9, 10.

10 M. Szaniawska–Schwabe, *op. cit.*, p. 10.

The first Immigration Act (Zuwanderungsgesetz), which made up a comprehensive formal and legal framework for regulating the issue of immigration, and also, for the first time, the question of foreigners' integration, came into force at the beginning of 2005.¹¹ This law divided the basis of the right of residence according to the criterion of goal into the following categories: labour, education, family unification and humanitarian purposes. It simplified the rules of granting a work permit through the reduction of residence titles to two basic ones: limited and unlimited right to work. The law introduced also a comprehensive system of integration programmes whose coordination was vested in the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge – BAMF). Migration Council experts in their Migration Report for 2004 admitted that the Immigration Act sealed the transformation of Germany from an informal into formal immigration country.¹²

Since 2005 new tasks have been assigned also to the Office for Integration and Refugees. This body used to bear the name of the Federal Office for the Recognition of Foreign Refugees and dealt mainly with proceedings for granting refuge, and after 2005 was assigned with new important tasks. Among them are, for example:

- managing and coordinating integration courses,
- developing a nationwide integration programme in cooperation with the central participants of support of integration,
- managing and coordinating tentative consulting for immigrants,
- supporting integration projects.¹³

Nowadays, particularly in the question of the right of refuge there are certain views which emphasise the strict control of the influx of refugees in order to avoid abuses which occurred in the “visa affairs”. Increasingly frequently one can hear views indicating the growth in participation of immigrants in public life, for example through

11 *Ibidem*, p.11.

12 J. Klaus J. Bade, M. Bommes, R. Münz (ed.), *Rat für Migration: Migrationsreport 2004*, Berlin 8.7.2004, p. 242.

13 O. Steinert, *op. cit.*, p. 28.

granting them the right to vote in local elections. In the document “Priorities of a coherent migration policy for Germany and Europe” of 2009, the parliamentary fraction of the SPD opted for, among other things, introducing a point system of recruitment of highly specialised personnel (on the basis of the criteria of: age, education, language abilities and professional experience) as well as providing common access for all immigrants to the German health care system.¹⁴

Among German political parties there is no complete agreement on the form of migration policy and on solutions for integration. There are ideas according to which integration actions (e.g. language courses) should be fully paid, as well as completely extreme views assuming covering the costs of such courses with the public money. The German parties are split as for their views on the methods of the integration of foreigners. The left wing speaks openly about the necessity for integration of the modern multicultural society. Also the Greens emphasise that Germany is a multicultural society and the state should support the development of pluralism in the spirit of tolerance and mutual recognition. On the opposite political pole are the Christian Democrats. It is they who introduce to the public debate a controversial idea of the German “leading culture” (Leitkultur), proclaiming a thesis on the necessity of assimilating foreigners and the slogan of “parallel communities” (Parallelgesellschaften) as an argument confirming the existence of not integration but community disintegration.¹⁵

The situation of Germany is an example of the direct dependence between the economic status of foreigners and their potential involvement in political life. Every fourth immigrant lives under the poverty threshold, suffers from unemployment and has no health insurance, and 2/3 of foreigners have no education. Most of the foreigners live in big cities. Illegal immigrants resign from basic social and humanitarian rights guaranteed by both international conventions and national regulations. The Act on Residence (Aufenthaltsgesetz)

14 M. Szaniawska-Schwabe, *op. cit.*, p. 11.

15 J. P. Winkler, *Strümperei der Integrationsbeauftragten, Fraktion Parlamentarische Zielonych*, 12.6.2009, <http://www.josef-winkler.de/artikel/1118/8b80ad1137/index.html>, [online 21.8.2012].

imposes on the care providers a responsibility for informing offices of an incident with the participation of an illegal immigrant.

Negative integration trends in German society are confirmed by the first Report on Integration Rates of June 2009, prepared on commission of the Government Spokesperson for Migration, Refugees and Integration. In Germany a peculiar model of cultural conflicts crystallised, the occurrence of which is inconceivable in classical immigration countries. Despite the fact that immigrants today make up an integral part of the German community structure, there appeared “so far unnoticed niches of parallel communities, as new inflammatory focuses.”¹⁶ The stronger tendencies towards reducing the immigrants’ participation in community and political life, the stronger inclination to integration within ethnic groups and disintegration of the whole society.

Phases of the German immigration policy:

1. 1945–61 – returns of the ethnic German population from other countries;
2. 1955–61 – beginning of the organised influx of contract workers;
3. 1961–73 – apogee of the influx of contract workers stimulated by the government’s policy;
4. 1973–89 – restrictive migration policy based on the principles of strict control of immigrants’ influx and persuasion to return;
5. 1989–92 – ambivalent migration policy (politically initiated influx of ethnic German population and, at the same time, a restrictive law);
6. 1992–2000 – tightening of the refuge policy;
7. Present time – attempt at enlivening economic migration at the simultaneous continuation of the restrictive refuge policy.¹⁷

16 S. Zekri, *Ausländer gegen Inländer. Gemeinsam in der Sackgasse: Die Konkurrenz der Verlierer*, „Süddeutsche Zeitung Aktuell“, München, 2005, pp. 89, 93.

17 M. Szaniawska-Schwabe, *op. cit.*, pp. 27–29.

4.2. Political rights of foreigners in the Federal Republic of Germany

In terms of German electoral system, this consists of proportional variant with two-track representation on the basis of universal suffrage for German nationals aged 18 or over. Half of the 656 basic seats in the Bundestag are allocated through relative majority in constituencies and the other half through party lists in each of the 16 Länder. The decisive vote is the second one, through which distribution of party seats have been won. These are then deducted from the total on the basis of the second vote. This vote is then distributed and transformed into seats according to Hare – Niemeyer formula that is calculated by dividing the number of valid votes by the district magnitude. Parties are given as many seats as they win quotas and any remaining seats are awarded to parties with the largest remainder of votes (unless a party wins more constituency seats than its proportional share of the second votes, which in that case means that the parliament is enlarged accordingly). Parties gain seats if they pass the electoral threshold of five per cent. In other words, the German election system is a modified system of proportional representation. On the Länder level, the voting system is similar to that of central level but with the main difference being the greater variance in public support seating to the party the electorate vote for indicating that the party or parties in power in the Bundestag may not necessarily be in majority in all Länder.¹⁸

German citizenship is required for the right to vote or to be a candidate in national elections. Franchise on the municipal level is additionally given to EU-citizens.¹⁹ The governmental efforts to improve and foster integration in recent years have underexposed the aim of political representation and participation of migrants and their descendants. Despite the decisive liberalisation of citizenship regulations and even naturalisation campaigns there are still quite restrictive elements which foremost affect migrants from Turkey or more generally from Muslim countries.

18 P. Odmalm, *op. cit.*, p. 97.

19 J. Palmowski, *In search of the German nation: citizenship and the challenge of integration*, „Citizenship Studies” 12(6), 2008, pp. 547–563.

Despite the legal changes which have occurred in the recent years in the issue of access to citizenship and the integration policy itself, still most civil and social aspects of citizenship are available to legal resident. Lacking citizenship – especially for non – EU nationals – still means exclusion from German society. In addition to security of residence and full political rights, being a national is in many instances a prerequisite for number of middle and senior ranking positions in the public sector, which include judges, civil servants, university professors and teachers. Since full political rights was denied in a decision made by the Constitutional Court in 1990, becoming a German citizen was the only means to bring Germany’s migrant population into political community.²⁰

According to German Citizenship Law, the requirements for naturalisation are: a length of legal stay in Germany of 7/8 years (reduced from 15 years), a permanent residency permit, the ability to maintain a living (also referring to 16 year olds since 2007), sufficient German language skills and knowledge about German social and legal order as well as living conditions in Germany (to be proved in a language test since 2007 and since 2008 in a citizenship test), not having committed any serious criminal offence, commitment to the German constitution and – generally – to give up the former citizenship. The new requirements were implemented in the name of internal security.²¹

The implementation of a nationwide citizenship test in September 2008, as well as its predecessors in some Länder since 2006, reflects the notion in the German debate that integration and its final achievement of German citizenship points to something beyond formal rights of participation or the commitment to the constitution, but is “about the feeling of belonging” and the commitment to the values underlying the constitution.

One of the elements of integration and naturalisation is the test that foreigners need to pass. The nationwide citizenship test is regarded

20 P. Odmalm, *op. cit.*, p. 35.

21 F. Miera, *Political Participation Of Migrants In Germany, EUV, European Commission*, September 2009, http://emilie.eliamep.gr/wp-content/uploads/2009/10/emilie_political_rights_policy_brief_germany_en.pdf, [online 23.6.2012], p. 5.

being more matter-of-fact. In total 310 questions, 10 of which refer to the specific dealing with the topical fields in the curriculum of the naturalisation course: “Life in democracy, history and responsibility, human being and society.” The test has been criticised by several organisations as being partly incorrect, unclear or too difficult to understand.²² One central Muslim organisation (Zentralrat der Muslime) appreciated the test in general but criticised that some questions were “ideologically biased”. Maria Böhmer (CDU), Minister of State in the Federal Chancellery and Federal Government, Commissioner for Migration, Refugees, and Integration (in the following: Commissioner for Migration) declared that the questions would only test the applicants’ knowledge about Germany’s politics and society. This would make migrants into “mature citizens who know their rights and duties”.²³

‘Foreigners’ (persons without German citizenship) may become political party members – with the exception of the Bavarian CSU, while the CDU requires a one-year waiting period.²⁴ There are no statistical data on the percentage of members with migration backgrounds in German political parties. People from the respective parties confirmed that while there are currently no plans to collect data about the migration background of their members, they themselves estimated the percentage to be quite low, while the Green Party estimated a somewhat higher proportion. According to representative studies, less than one per cent of migrants from the former main ‘guest worker’ sending countries were members of a political party.²⁵ In comparison, out of all eligible voters in Germany about 4% belong to a political party.²⁶ According to the German electoral system, half of a total of about 600 members in the Bundestag are elected by direct vote on a first-past-the-post-basis, the second half is elected via lists of candidates put forward by

22 „Zentralrat der Juden kritisiert Einbürgerungstest“, http://www.welt.de/politik/article2196596/Zentralrat_der_Juden_kritisiert_Einbuengerungstest.html, [online 9.7.2008].

23 F. Miera, *op. cit.*, p. 10.

24 N. Cyrus, *Habt ihr keinen Deutschen?*, <http://www.sueddeutsche.de/politik/330/460959/text/>, 2005, [online 6.6.2012].

25 N. Cyrus, *Active Civic Participation of Immigrants in Germany*, Country Report prepared for the European research project POLITIS, Oldenburg, <http://www.politiseurope.uni-oldenburg.de/download/Germany.pdf>, [online 10.7.2012].

26 U. Alemann, *Das Parteiensystem der Bundesrepublik Deutschland*, Leske, Budrich, 2003, pp. 5–25

the parties in the 16 Länder (proportional representation). Hence, each voter may cast two votes, the first one for one of the candidates in their constituency, the second for one for the party lists in the federal state concerned. The seats are distributed among the parties in proportion to their second vote results – the precondition being that they have to have polled at least five per cent of all second votes or won at least three constituency seats on the basis of the first votes. Most Länder elections follow this electoral system. The majority of the municipal governments are elected in a personalised proportional representation system (voters have three votes, or as many votes as members of the municipal body to be elected).²⁷ The candidates listed on ballot sheets are elected by the delegates of their respective parties. Figures on migrant candidates are also difficult to collect. Based on data from the Federal Elections Office the percentage of immigrants among all candidates only slightly increased between 1998 and 2002 from 1.6 to 1.7 per cent, while their total numbers even declined. In 1998 most of the candidates (44%) came from Eastern Europe and the CIS, declining to 25% in 2002, while the proportion of candidates from Turkey and the Near East rose from 42% (1998) to 57% (2002).²⁸ While CDU/CSU, SPD and FDP only listed about one per cent immigrants among all of their candidates, Greens and Left Party listed three to four per cent. In 1998 and 2002 there were three, in 2002 there were seven immigrant candidates without party affiliation, which suggests that migrant politicians do not find their place easily within the political parties.²⁹

The share of ‘first generation migrants’ among the total of 2,346 candidates standing for national elections in 2005 was 2.9% (67 candidates) of whom 13 immigrated as (Spät-) Aussiedler from Romania, Poland, the Soviet Union resp. the CIS, 21 came from the countries of ‘guest worker’-recruitment (esp. Italy, Yugoslavia, Turkey), and 33 from other countries³⁰.

27 F. Miera, *op. cit.*, p. 26.

28 S.C. da Fonseca, *Neue Bürger – neue Kandidaten? Die Parteien im Wettstreit um Migrantenstimmen*, 2006, WZB-Mitteilungen (114), p. 34.

29 S.C. da Fonseca, *Immigrant constituencies as a political challenge. The German federal elections 1998–2005 revisited, paper prepared for the Annual Meeting of American Political Science Association*, Philadelphia, PA, 2006, p. 26.

30 A.M. Wüst, *Wahlverhalten und politische Repräsentation von Migranten*, “Der Bürger im Staat”, Heft 4, 2006, p. 232.

In total the Left Party listed the most migrant candidates, the CSU/CDU the fewest. The majority of migrant candidates in the Green Party were from ‘guest worker’ sending countries, respectively from Turkey, or other countries, only one having immigrated as an (Spät-)Aussiedler. The Liberal Democrats (FDP) ballot lists mainly held migrant candidates from other countries, in particular France, the USA and from the Near East. The majority of the candidates born in Turkey are listed by the Left Party, and the Green Party, while the traditional representatives of migrant workers, the SPD, only listed three Turkish migrants, less surprisingly the Conservatives listed only one and the Liberals (FDP) offered no candidates from Turkey. With the exception of German refugees and expellees and Aussiedler, parliamentary representation of migrants in Germany is relatively new and still quantitatively low. In 1987 the first politician of Turkish origin, Sevim Celibi, became member of one of the regional German Parliaments (Land Berlin), affiliated with the Green Party.³¹ In 1989 the first Turkish– German politician was elected into the European Parliament (Leyla Onur, SPD), in 1994 Cem Özdemir (Green Party) was the first politician from a Turkish migrant family to be elected into the German Federal Government. In 2007 there were about 80 deputies of Turkish origin in German parliaments, compared to 2,5 million residents of Turkish background or an estimated 700,000 Germans of Turkish origin. In the German Parliament (2005–2009) there were eleven deputies with a migration background, seven of whom are first generation migrants, and four of whom were second generation migrants. There were quite possibly other deputies from the second generation – especially the descendants of Aussiedler – whose migration background is not publicly known. The proportion of MPs with a migration background was generally very low (1.8% of a total of 612 MPs), their proportion was higher in the Left Party (5.6% of 53 MPs) and the Green Party (7.8% of 51 MPs); their share of SPD–MPs was only 1.4%; of CDU/CSU–MPs 0.4% while none of the FDP fraction members had a migration background. The main parties are now increasingly trying to appeal to migrant voters in election campaigns through their choice of images and topics. Nevertheless, it seems that the political parties are

31 F. Miera, *op. cit.*, p. 27.

only slowly considering proactively attracting more migrants as voters, members, or candidates – given the fact that numbers of naturalised migrants are increasing. It is even more difficult to understand the German political system for residents with a migration background than it is for native Germans. The SPD admitted that the party was still far away from its targets regarding “intercultural opening”; saying that although some ideas are being debated, they are not currently at the centre of their political work. These ideas involve the possibility of offering mentoring programs for migrants, or approaching migrants in their first language in order to show some courtesy.³²

Based on the initiative of migrant members, nearly every party has established a working group, committee or network of Turkish / migrant members within or affiliated with the party: Immi-Grün within the Green Party, the Federation of Turkish Social-Democrats on the European level as well as local networks. Within or close to the SPD, Liberal Turkish-German Union re-affiliated with the FDP, and the German-Turkish Union as a “platform” of the CDU. The groups function as forums for migrant members as well as intermediaries between the migrant community and the party.³³

Beyond the organisations within the parties, there have been some initiatives for politician migrants, the latest of which was the “Network of Deputies of Turkish Background”, a network of about 50 politicians, who first met in April, 2007. It provides a forum for the “exchange of experiences”, and aims to “develop common positions and proposals to improve the integration of migrants of Turkish background”³⁴.

As regards their representation in formal political and state institutions, the parliamentary representation of migrants in Germany is still quantitatively low. In the migration background (the Federal German Parliament – 2005–2009 there were 11 deputies with a migration background – equivalent to 1.8 % of all Members of Parliament).³⁵

32 *Ibidem*, p. 27.

33 *Ibidem* pp. 28 – 29.

34 M. Kiyak, *10 für Deutschland. Gespräche mit türkeistämmigen Abgeordneten*, Hamburg, 2007, p. 11.

35 F. Miera, *op. cit.*, p. 27.

According to official census data there are more than 15 million residents with a ‘migration background’, or in other words persons who have either migrated themselves or who have at least one parent who has migrated to Germany. The Turks are the largest migrant group (1.7 million), followed by the Italians (530,000), the Poles (380,000), the Serbs (330,000) and the Greeks (290,000). In addition, there are 7.8 million Germans who are naturalised immigrants. Ethnic Germans have full citizenship rights, and since 1992, EU – citizens are entitled to participate in elections at the municipal level. All other third – country nationals are not allowed to vote in national or local elections. Foreigners are free to associate in (political) organisations or make use of any direct forms of expression of opinion. However, ‘Foreigners’ Associations’ can be forbidden more easily than associations of Germans if their activities are considered to be unlawful. Since 2000, children of foreigners can acquire German citizenship if one parent has been legally living in German for at least eight years.³⁶

Most common forms of organisational involvement of foreigners in political life in Germany are round tables, integration councils and the National Integration Summit.

4.3. Participation of foreigners at the local level

The actions aiming at increasing the level of political participation of foreigners are also taken at local level. The debates on local franchise for Third Country Nationals (TCNs) illustrate the dominant view that full formal political participation (voting rights) is linked with German citizenship that can only be acquired at the end of a successful integration process.³⁷

As a result of migrant’s demands, Foreign Citizens’ Advisory Councils were implemented in many German cities. They constituted the only way for non–German immigrants to have any kind of participation

36 *Ibidem*, p. 27.

37 F. Miera, *op. cit.*, p. 13.

in institutionalised or formal politics, but have always been contentious since the extent of their power and influence is limited.

In the 1970s several West-German municipalities introduced so called Foreign Citizens' Advisory Councils (FCACs – Ausländerbeiräte). Residents with a foreign passport were entitled to elect a board from their own ranks that advise the municipalities regarding issues that especially concern 'foreigners' and articulate 'foreigners' interests.³⁸ While the number of FCACs has increased since then, their political relevance seems to have diminished. It is estimated that today there are a total of about 400 FCACs in 12 of the 16 Länder.³⁹

The task of all foreign citizens' councils is to ensure the possibility of foreigners' participation in taking decisions on the matters which are important to them. The main task is to conduct ancillary activity in taking crucial decisions. The councils also participate in the procedure of electing candidates to the aforementioned local government authorities.⁴⁰

There are two basic models to place foreigners' councils within the communal structures. In some cities the councils are independent but its office is included in the organisational structures of the communal office. In other cities the councils are totally independent. The main task of the council is to provide public administration authorities with counselling. The powers which are granted to a particular council may differ in Länder. The first power concerns submitting motions and the power to express an opinion. In addition, the council may sometimes take decisions on spending its financial resources. In some cases the council possesses the same powers as every committee in the commune council, and always it has the right to be heard of.

Foreigners' councils, similarly to all other communal advisory bodies, aim at increasing social involvement and building more solid

38 Bundesausländerbeirat, Wir über uns, www.bundesauslaenderbeirat.de/Selbstdarstellung/selbstdarstellung_der_Bab.htm, [online 27.7.2012]

39 *Ibidem*.

40 J. Radwanowicz-Wanczewska, *Rady cudzoziemców w Republice Federalnej Niemiec*, „Samorząd Terytorialny – partycypacja obywatelska w samorządowych procesach decyzyjnych” 1–2/2010, p. 139.

grounds for the decisions of the commune councils to reach the broadest consensus.⁴¹

As far as the composition of the council is concerned, in most cases foreigners' councils are composed of foreigners only, in some cases citizens of the Federal Republic of Germany (FRG) may be members of the council if the principle of parity applies.⁴² There are also two basic models of selecting the council members. The first solution is grounded in the possibility of appointing citizens who possess appropriate professional knowledge as advisors by the commune council. The latter solution is based on the alternative form of elections with selective voting right, which in practice means that only foreigners are eligible to vote.⁴³

It needs to be emphasized however that voting participation in FCACs is declining from around 20% in the early 1990s to about 8 to 10% on average in 2001 (in some big cities to 3–5%) and this even in those Länder with the strongest tradition of FCACs⁴⁴, in 2004 in NRW participation was between 2% and 32%. Also the number of candidates standing for election in the FCACs has declined over the last few years. For instance, in 2001 in Hesse 33 FCACs and in NRW 31 FCACs could not be elected mainly as a result of lack of candidates⁴⁵. The role of FCACs is not only contentious in the light of the decreasing voting participation.

The main critique refers to some very concrete shortcomings of the institution itself; in particular its lack of authority in local government, a low level of acknowledgement of the boards by German politicians, missing information and public relations on its existence in the migrant communities, and a low level of professionalism among FCACs. The relevance of FCACs has declined even more, because opportunities for participation in the political system have – at least for certain

41 J. Radwanowicz–Wanczewska, *op. cit.*, p. 140.

42 L. Hoffman, H. Even, *Die gegängelte selbstvertretung – Halbherzigkeit bei den Direktwahlen zum kommunalen Ausländerbeirat*, „Zeitschrift für Ausländerrecht und Ausländerpolitik“ 1985, p. 124.

43 T. Troidl, *Kommunale Beiräte*, „Bayerische Verwaltungsblätter“ 2004, p. 323.

44 L. Hoffmann, *Ausländerbeiräte in der Krise*, *Zeitschrift für Ausländerrecht und Ausländerpolitik*, 21/2, 2002, p. 64.

45 *Ibidem*, p. 64.

migrant groups – increased, in particular for EU–citizens eligible for local franchise since 1992. Furthermore, due to increasing durations of residence the number of migrants eligible for naturalisation has grown. Naturalised migrants normally lose their franchise in the FCACs. Finally, social, ethnic and national heterogeneity among migrants has increased compared to the first generation of guest workers. In the past, due to stronger social networks, many migrants deemed the support of FCACs to be an act of solidarity, while candidates’ lists were organised according to national background. Today, many migrants identify much less with such an institution and the scope of issues relevant for migrants and their descendants has broadened while the significance of national origin for political participation is diminishing. The declining interest in FCACs has been interpreted as part of a ‘normalisation’ of migrants and their political interest and a reasonable turning away from particular, national–bound orientation.

Meanwhile several cities and Länder have implemented Integration Advisory Councils. The idea behind these boards is that the reduced representation of FCACs will be replaced by the more holistic and integral approach of integration. In these councils various representatives engage migrants and – in fact, in the majority – non–migrants who are committed to the issue of integration policy. For example the Berlin Land Advisory Council for Integration and Migration Issues (Landesbeirat für Integrations– und Migrationsfragen), founded in 2003, consists of state secretaries, representatives of Berlin districts, of associations, trade unions and other NGOs and “as the council’s basis” six elected members of migrant organisations. Migrant representatives are elected from 109 different migrant associations. They are assigned to six previously determined regions of origin (i.e.: the European Union, Europe outside the EU, Turkey, Near and Middle East including Pakistan and India, Far East, Africa, South–, Middle– and North–America and one position without regional classification). The Council meets three or four times a year as a permanent round table. Among other things it has made a recommendation to the Berlin Senate to launch legislative initiatives to introduce franchise for TCNs on the municipal level. Despite its partly representative structure and

choice of topics, such an Integration Council, can only be understood as political representation of migrants in a very limited way.⁴⁶

Experts emphasize that when it comes to Advisory Councils one cannot speak of participation. They have been allowed to debate something and make recommendations. These weren't in any way binding. The migrants were supposed to debate some topics among themselves and get the feeling that they were included. The spokesperson for integration and migration from the Liberal Democrats' Fraction formed her opinion on the basis of her own experience in municipal local government with a FCAC and as member of an Integration Council. She criticises missing competences and commitments of individual candidates, of cronyism in the process of setting up the lists of candidates as well as the retarding effect "this state institution" has on members of the board who are really committed activists."⁴⁷

Foreigners themselves do not know how the councils function, which results in a low turnout in the councils' elections. Moreover, merely 2–3% of all foreigners residing in Germany belongs to a political party. It is a resultant of many factors. The most crucial are: lack of due and reliable information, lack of real legal instruments which would allow councils to realistically participate in decision-making processes and also decreasing social integration of foreigners.⁴⁸ On the other hand, for some migrants the FCACs appeared to be a first step at the beginning of political education.

It is worth noting that foreigners' councils themselves as an instrument which is aimed at increasing the level of integration require foreigners' engagement. This dependence fully reflects integration mechanism which is based on the interaction between both parties. Transforming foreigners' councils into integration committees was a reaction to criticism.

It is pointed out that the form of foreigners' councils infringes the principles of representative democracy. The legitimacy of foreigners especially with reference to unequal treatment of foreigners and German

46 F. Miera, *op. cit.*, p.18.

47 *Ibidem*, p. 19.

48 J. Radwanowicz–Waczewska, *op. cit.*, p. 144.

citizens is questioned. Only foreigners can take part in the elections for foreigners' councils, which is somewhat in contradiction with the principle of generality of elections. This principle is grounded in the principle of equality, which means that each citizen's vote is equally important. German citizens do not participate in the elections for the councils therefore some people state that these elections are not equal. Thus there are some postulates to treat foreigners' councils merely as source of information about foreigners and their status. On the other hand, foreigners' councils are an example of "positive discrimination", which means that in certain circumstances the group that is socially weaker is in a more privileged position to enable them to participate in decision-making processes.

The detailed rules of how foreigners' councils function to a great extent depend on the federal state they are applied in. For example, the Bavarian commune electoral law does not mention foreigners' councils and does not stipulate the legal grounds for their appointment. Therefore, in Bavaria only the commune itself decides on the formation of foreigners' councils. Contrary to the regulations which are in force in Bavaria, the Thuringia commune electoral law includes explicit reference to the issues on foreigners' councils formation. A commune council may adopt a resolution on forming foreigners' council in this particular commune. The council may be composed of people who are not German citizens. The issues on forming such councils however are not regulated in detail – every time they have to be stipulated by the commune charter.⁴⁹

Experts agree that advisory councils cannot replace political participation. All argued in favour of topical involvement in local politics, participation in the local parliaments, topic specific committees – and of course, through voting rights. Another important institution acting as an intercessor of migrants' rights are the Foreigners' Commissioners – today called Integration Commissioners, the first one being established in 1978 in NRW. Foreigners' Commissioners act on the local, Länder and national level as advocates for migrant interests. Regardless of the merits of many of the Commissioners, this institution reflects more of

49 J. Radwanowicz–Wanczewska, *op. cit.*, p. 141.

a paternalistic or patronising attitude from German authorities towards migrants rather than a means of political representation; especially since they are normally held by a German who has no migration background themselves. According to Hoffmann, in some cases this institution seems to have hindered political participation. In some municipalities the office of the Commissioner emerged out of the office of the FCAC. In some cases the Commissioner even impeded the foundation of an FCAC in the same municipality; quite seldom have both institutions successfully cooperated.⁵⁰

Frankfurt am Main is an example how the solutions on integration at the local level are applied. Frankfurt am Main has a large share of residents with a migratory background. Most foreigners have lived for more than a decade in Frankfurt, and families with a migratory background are now in the second and third generations. Many migrants have German citizenship, and if the immigration of ethnic Germans is considered, more than one-third of the city's population has a migratory background. In 1989 the Office for Multicultural Affairs (Amt für multikulturelle Angelegenheiten) (AMKA) was founded. Its task was defined as promoting the constructive coexistence of various groups with different national, social, ethnic and cultural background, and their integration. For many years such a municipal office was unique in Germany. In addition to the AMKA, the city parliament (Magistrat der Stadt Frankfurt am Main) created several other institutions during the years following. For example, foreign residents in Frankfurt elected in 1991 the first foreigners' council (Kommunalen Ausländer- und Ausländerinnenvertretung). Another body is the city parliament commission for equal rights and integration, established in 1995, which advises the city mayor and administration. The AMKA performs a broad spectrum of activities. It is engaged as coordinator and councillor for migrant issues, but also initiates and implements its own integration programmes financed by its municipal budget and by state as well as federal and European funds. Target groups are the resident population with migratory backgrounds, and the resident German population of the city districts. It aims to involve the indigenous population in integration

50 F. Miera, *op. cit.*, p. 67.

programmes and implements public relation activities to gain support in the native population. The various tasks encompass, for example, counselling, mediation and conflict management.

The AMKA acts as a contact point for migrants and steers people requiring assistance to the responsible municipal and public offices. After initial conflicts, cooperation with other branches of the city administration became well established, and the AMKA receives frequently requests for counselling or mediation by other offices of the municipality when migrant affairs are involved. In 1996 the Stadtteilvermittlung project was launched. In this project, mediators are engaged in conflict management at the local neighbourhood level. It is meanwhile part of the standard function of AMKA. The AMKA features a heterogeneous group of 50 trained mediators, most of them in a voluntary capacity. The AMKA further coordinates language and orientation courses in Frankfurt. So it closely cooperates with the adult education centre (Volkshochschule) which employs 150 trained staff members. Orientation courses are usually held by locally resident migrants: the personal experience and intercultural competence of these migrants, who consider themselves citizens of Frankfurt, contributed to the successful implementation of these courses. Those referred usually have a high motivation and perceive their competence as a very useful skill based on personal experience (empowerment approach). The AMKA cooperates with the municipal department for children and youth and the school department and provides counselling for language training programmes for kindergartens and primary schools that integrates language training and social as well as cultural integration and that targets the whole family.⁵¹

Another project is intercultural work with parents on vocational training. This aims at improving vocational training results and the immersion into the labour market of young people with migration backgrounds. The AMKA is carrying out various other activities, such as public relations and information on issues relevant to the migrant

51 M. Borkert, W. Bosswick, F. Heckmann, D. Lüken-Klaßen, *Local integration policies for migrants in Europe*, "Office for Official Publications of the European Communities", Luxembourg, 2007, p. 45.

and native populations, anti-discrimination activities or information and service for and about elderly migrants. Since the AMKA reflects the state of integration and the demand for integration measures, it contracts scientific institutions for empirical research on the state of integration, on the demand for targeted integration measures as well as evaluation and scientific counselling for existing measures.⁵²

Another example is the Federal State North Rhine–Westphalia as it has a long and lively history of immigration and integration. About 4 million people who originate from immigration circles live there. In comparison to other federal states North Rhine–Westphalia

has become a role model for the integration initiatives. The federal state government has risen the integration of immigrants to the rank of independent political area and as the first in Germany formed the Ministry of Integration. Moreover, the inter-ministerial working group called „Integration” was formed. According to the guidelines of national government immigrants and local people are to live together on the basis of mutual leading culture. The programme „Komm In–NRW” [Come to North Rhine–Westphalia] initiated in 2005 by the government of the Federal State North Rhine–Westphalia was intended to support communities to fulfil integration tasks. This programme of support aimed at improving offers, structures and processes which serve to admit new immigrants. This programme of support concerns three main issues:

- the transparency of offers and demand for integration assistance should be provided for all people concerned,
- various offers and various suppliers of integration assistance should be combined in a network to make it more harmonised; only this way offers of integration assistance could be exploited reasonably,
- moreover, it is possible to support actions which aim at controlling quality and effectiveness of the offered integration assistance.

52 *Ibidem*, p. 46.

On 27 June 2006 the government of the federal state adopted a plan for North Rhine–Westphalia as “a country of new opportunities for integration” – The Action Plan – Integration”⁵³ This plan carries on with the integration offensive which was adopted in 2001 by all fractions of landtags and aims to proceed with the commenced integration process as well as to find answers for new challenges. The introduction to the plan includes ascertainment that due to integration there are some negligent acts or omissions concerning spatial, social, economic, educational and cultural integration and these acts or omissions need to be eliminated. A new action plan which comprises 20 guidelines and focuses on educational and language support, removing barriers in taking up the employment was adopted.⁵⁴ The new plan also assumes cooperation with Islamic organisations (which function in the country and recognize constitutional values) from the dialogue to precise co-operational arrangements targeted at shaping the grounds for teaching Islamic religion.

The government of the Federal State North Rhine–Westphalia thanks to this action plan commenced a wide range of innovations in the matter of integration policy which took direction in the whole Germany. In the annex attached to the action plan the following key issues were enumerated: supporting the language, improving educational situation, the opportunities to obtain education, work or profession, the possibility of access to social welfare, and the perspective of integration.⁵⁵

On 25 September 2006 the government of the Federal State North Rhine–Westphalia implemented one point of the action plan i.e. appointment of the council on integration. The council’s task was to provide the national government with counselling on aspects of integration policy as well as to support and critically accompany the national government in these matters. The council, apart from scientists and economists, comprises of the personalities of other areas of social life i.e. members who originate from immigration circles

53 *Ibidem*, p. 68.

54 L. Schmahl, *op. cit.*, p. 65.

55 *Ibidem*, p. 66.

and the representatives of local people.⁵⁶ The council's objective is to reach a broad social consensus in integration policy and to develop new and far-reaching proposals for this policy with the participation of immigrants.

Some scholars believe that you cannot divide integration policy at the community level. This policy leads to the consequences only when the full cooperation between immigrants and local people is possible, taking into consideration all crucial spheres of life. The intentions and programmes may only be guidelines for practical integration action, which needs to be taken not only by a particular commune itself and finally also by every citizen of the country.⁵⁷

56 *The press release of the Ministry of Generation, Family, Women and Integration of the Federal State North Rhine–Westphalia of 25 September 2006.*

57 L. Schmahl, *op. cit.*, p. 70.

5. POLITICAL INTEGRATION IN THE UNITED KINGDOM

5.1. Integration policy in the United Kingdom

Immigration to the United Kingdom has changed over the past 15 years. Migration has grown in volume, has become more temporary in nature, and its composition has become more diverse. From 1999 to 2009, net migration to the United Kingdom added 2 million people to the total population.¹ This significant net inflow explains 70 percent increase in the foreign-born population over recent years, from 3.8 million in 1993 to 6.5 million in 2010, amounting to 12 percent of the United Kingdom's population. Furthermore, emigration has risen steeply, dropping only with the advent of economic recession.²

Migration has become more temporary in nature. Net annual long-term migration (defined as those persons coming to stay in the United Kingdom for more than one year, minus those leaving for more than one year) reached 252,000 in 2010. The gross inflow (i.e., ignoring emigration) stands at approximately 600,000. The short-term inflow (migrants coming for more than three months but less than one year) adds another approximately 300,000.³

This picture of human movement is vastly different from that seen even a decade ago. This contrasts significantly with earlier waves of immigration to the United Kingdom mainly from the Caribbean, India, Pakistan, and Bangladesh, which in part gave rise to formation of model of race-relations.

1 J. Salt, *International Migration and the United Kingdom* (report of the United Kingdom SOPEMI Correspondent to the OECD, 2010, Table 1.1), www.geog.ucl.ac.uk/research/mobility-identity-and-security/migration-research-unit/pdfs/Sop10_final_2112.pdf, [online 4.7.2012].

2 S. Saggar, W. Somerville, *Building a British Model of integration in an era of iMMigration: Policy lessons for government*, University of Sussex and the Migration Policy Institute, 2012, p. 3.

3 *Ibidem*, p. 3

Poland and India are now the main countries of origin of long-term migrants, and London and the South East of England are the main destinations of choice, as they have been since the 19th century. Half of all immigrants live in these areas. However, across all UK regions there have been significant percentage increases in the size of the foreign-born populations. This is partially due to the extent of immigration in recent times, and the fact that Eastern European immigrants have higher propensity to locate outside of Greater London and have accounted for a substantial proportion of flows since 2004.⁴

Immigrants have lower employment rates than UK-born people on the whole, although, unfortunately, the rates vary widely according to gender and nationality. Men have similar employment rates, while immigrant women have much lower employment rates. In 2010 the employment rates of male workers from the A8 countries (90 percent), other European Union (EU) countries (76 percent), India (81 percent), and Australia (86 percent) were higher than that of UK-born men (75 percent); migrants from Pakistan and Bangladesh, however, experienced significantly lower employment rates than the UK-born persons. In other words, there has been a considerable variation of experience across different migrant groups, a factor that has been poorly transmitted into policy formulation.⁵

The unauthorized resident population has been estimated at 618,000 or around 10 percent of the foreign-born population. This proportion has been judged higher than those in comparable EU countries such as Germany and France.

In accordance with the aforementioned MIPEX report, the government appeared unprepared for the number of EU citizens who came from the 2004 accession countries. The hot debate concerned such immigration issues as real costs versus benefits, ‘community cohesion’ and ‘British jobs for British workers.’⁶

4 *Ibidem*, p. 4

5 C. Rienzo, *Outcomes and Characteristics of Migrants in the UK Labour Market* (Oxford: Migration Observatory, 2011), <http://migrationobservatory.ox.ac.uk/sites/files/migobs/Briefing%20-%20Characteristics%20and%20Outcomes%20of%20Migrants%20in%20the%20UK%20Labour%20Market%20v2.pdf>, [online 5.7.2012].

6 <http://www.mipex.eu/uk>, [online 30.8.2012].

To restore public confidence, 2008's points-based system controlled the type of non-EU migrant workers and tried to mitigate local impacts. The opposition and pressure groups talked about capping the number of newcomers. When England was ranked Europe's most densely populated country, the ceiling of the population growth and net migration was set. The UK's many mobile immigrants and expatriates make both targets problematic. With 'earned citizenship,' the government shifted from controlling the number of people who can come to those who can stay.

MIPEX found that the recent turn in policies made conditions slightly less favourable for integration. The UK fell 10 points—the most of any country—and out of the top 10. All residents will benefit from the stricter equality laws. If implemented, the long and confusing path to 'earned citizenship' may delay and discourage potential citizens and local communities from investing in integration as they had before.

The characteristic features of integration system in the United Kingdom mentioned in the MIPEX report (with the indication on problematic aspects) are as follows:

- Longer and more bureaucratic path to 'earned citizenship': will newcomers contribute more to their communities, or less?
- Some of strongest anti-discrimination laws and equality policies;
- 2010 Equality Act makes law and duties simpler and easier to use;
- 21-year age limit for sponsors, spouses, partners: to fight forced marriage;
- UK policies for non-EU workers and families only half-way favourable: better career opportunities and more secure family life in Canada and US;
- Schools in England, Wales, Scotland, Northern Ireland are some of best prepared for newcomer pupils, leading European countries of immigration;

- Strongest commitment to implement intercultural education.⁷

As regards the political integration the report states that non-EU residents would have the opportunity to become involved in public life if they lived in most other long-established countries of immigration in Europe. Not all can vote in elections, since only EU and Commonwealth citizens can. All enjoy basic political liberties under the law (as in 19 other countries). The many organisations that have been created by immigrants and often supported by the government are not organised together in the types of consultative bodies that are emerging across Europe (e.g. IE) and even in the United States. Grassroots movements on voting rights can also be seen in Canada and the United States, with IE as the leader.⁸

It is impossible to discuss the issue of integration in the United Kingdom and the problems of foreigners' integration without referring to its rich experience in this matter.

As we have talked about immigration, we have seen that England, and Britain in general, have long been home for several ethnic and religious communities, each with rich cultural traditions grounded in long history. According to the Oxford dictionary, "Integration" is defined as "the process of bringing to equal membership of a common society those groups or persons previously discriminated against on racial or cultural grounds". Thus, integration tends to explain an end of racial segregation and a process of becoming an accepted member of a community. Integration is a dazzling and treacherous concept that policymakers must define with care. It means different things to different people, with overlapping definitions dating from at least the 1930s.⁹ However, since 1945, immigration, integration and race have been recurrent features of a social change and political debates in Britain. Therefore I will try to see if it is so, to what extent England is a "multicultural" society, and also I will highlight the way in which these

7 <http://www.mipex.eu/uk>, [online 30.8.2012].

8 *Ibidem*.

9 S. Saggar, W. Somerville, *op. cit.*, p. 1.

migration flows are perceived among the English society and how this integration is carried out, especially on a political scale.¹⁰

Integration is often seen as important to the identity of the country. In part, integration policies and measures may be deployed to respond to the “crisis of confidence” that has arisen in several Western democratic societies in the past decade and the perceived dilution of distinctive national identities. This crisis has been both fueled by and reflected in the rise of far-right, anti-immigrant political movements that are principally concerned with perceived cultural threats to Western societies.¹¹

Integration additionally refers to the outcomes of immigrants themselves – whether they have jobs, what level of education they attain, and so on. This comes closest to the US understanding of immigrant integration. Typically the measure reflects how well immigrants are doing compared to the societal average across a range of indicators, accompanied by an assurance that gaps in performance are not, over time, attributable to immigrant background.¹²

The United Kingdom has a long history of immigration which dates back to the 18th century. These entries turned into mass migration during the post-war period, when displaced persons and refugees from Germany and Poland started to settle in the country. Apart from that a post-Second World War economic boom coincided with the demand for cheap labour by the national labour market and a liberal immigration policy among member states of the Commonwealth. Until now the UK’s colonial past and its persisting links with nations from the Commonwealth have determined the nature of migration to its territory: the overwhelming majority of immigrants come from nations with a historical, cultural, lingual and/or economic link to the UK.

The migration movements cited above led to restrictions on British immigration. The first limitation dated back to 1905 when the Aliens

10 S. Saggar, W. Somerville, R. Ford, M. Sobolewska, *The Impacts of Migration on Social Cohesion and Integration*, London: Migration Advisory Committee, 2012, p. 1.

11 C. Mudde, *The Relationship between Immigration and Nativism in Europe and North America*, Washington, DC: Migration Policy Institute, 2012, p. 4.

12 S. Saggar, W. Somerville, *op. cit.*, p. 1.

Restrictions Act was aimed at limiting the entry of East European Jews. In 1948 the British Nationality Act came into force granting freedom of movement to all Commonwealth citizens. This provision was modified in 1962, when work voucher quotas were introduced in the course of the Commonwealth Immigrants Act, which again was tightened in 1968 making entries of African Asian origin more difficult (Commonwealth Immigration Act). In the United Kingdom, after a brief acceptance of a policy of assimilation in education in 1964, the government accepted the notion of integration. This was defined by the then Home Secretary, Roy Jenkins, as “not a flattening process of uniformity but cultural diversity, coupled with equal opportunity in an atmosphere of mutual tolerance”.¹³

Entry from the Commonwealth was halted in 1971 with the introduction of the Immigration Act, and the living conditions of Commonwealth migrants in the UK aggravated by rescinding their right to settlement in 1981 (Nationality Act). Various follow-ups introduced visa requirements in 1986, regulated asylum applications in 1993 or dealt with illegal employment in 1996¹⁴.

The British Nationality Act of 1948 introduced a broad definition of citizenship for the residents of the United Kingdom and the Colonies (CUKC) and Independent Commonwealth Countries (CICC). This act which was targeted at maintaining the unity of the Commonwealth under the supremacy of the United Kingdom allowed the residents of those territories, migrants from former colonies to settle down. It was a considerable challenge for the country which was weakened by the war and was not mentally prepared for the inflow of people of different culture.¹⁵

Before the Commonwealth Immigrants Act of 1962 came into force the United Kingdom had been famous for its liberal immigration policy. This policy was sharpened due to the resistance of the British society reflected in racial riots in 1958 in Notting Hill. Although some

13 H. Barnett, *Constitutional and Administrative Law*, London, 2002, p. 750.

14 E. Currie, *Migration in Europa – Daten und Hintergründe*, Stuttgart, 2004 pp. 123–160.

15 Ch. Joppke, *Immigration and the Nation–State; United States, Germany and Great Britain*, Oxford University Press, 1999, p. 105.

attempts were made to solve this problem before, sensitive relationships with the countries belonging to the Commonwealth did not allow for a definite solution of this problem.¹⁶

The terroristic attack in the USA in 2001 affected the shape of immigration policy considerably. Since then the government has focused on the state security and border protection. The Anti-terrorism, Crime and Security Act adopted in 2001 allowed for the deportation of those immigrants who are suspected of participating in terroristic organizations.¹⁷

The United Kingdom as a member of the European Union needs to conform to the processes of the Europeanization of law, in particular in the context of preparing a greater area of cooperation within the formation of mutual migration policy. Since the Treaty of Amsterdam (i.e. by virtue of which migration policy was shifted to the first pillar of the EU) came into force (hence was included in the scope of the Communities competences) the United Kingdom seemed to be even more determined not to destroy the system of migration control which had been elaborated for decades. A natural consequence of this reluctant approach was partially the decision not to enter into the Schengen Agreement (1985).¹⁸

Although the United Kingdom clearly showed a reluctance to accept the EU policy on migration, it supported all seven reforms proposed in asylum policy in the years 1999 (when the Amsterdam Treaty came into force) – 2004, however, still being reluctant to changes in its own system of border controls and visa policy (the UK adopted 6 out of 21 proposed changes). Also in the discussion on the place of migration policy in the Treaty of Lisbon, the United Kingdom retained the possibility of choice by opt in/out method.¹⁹

The United Kingdom does not carry out an official integration policy *sensu stricto*. The actions focus mainly on equal treatment

16 K. Fiałkowska, J. Wiśniewski, *Polityka integracyjna Wielkiej Brytanii wobec uchodźców*, Fundacja Instytut Spraw Publicznych, Warszawa, 2010, p. 2.

17 K. Fiałkowska, J. Wiśniewski, *op. cit.*, p. 8.

18 *Ibidem*, p. 9.

19 W. Somerville, *Immigration under New Labour*, Bristol, 2007, p. 71.

of various groups and their participation in public and social life by granting citizenship. The citizenship is given under the *ius soli*, principle which means that an immigrant born on the territory of the United Kingdom is granted a British citizenship.²⁰

As far as naturalisation is concerned the most important regulations concern mainly the introduction of „probationary period” for the potential citizen of the United Kingdom in which s/he would have to not only show (as the document states enigmatically) his/her good personality features but also participate in the life and work for the benefit of local society actively. It is an example of the concept of so-called” earned citizenship” proposed a year earlier in the Green Paper “Path to Citizenship” with the view that ‘citizenship’ is a prize for taking some efforts for the benefit of the society. Moreover, under some conditions which are to be stipulated by additional legislation, the work performed for local communities could shorten the process of obtaining citizenship.²¹

The very high rates of immigration in recent years are creating areas in which children with two UK born parents are in a minority. This poses serious difficulties for effective integration as there will increasingly be no core culture with which to integrate. In some communities, particularly of Bangladeshi and Pakistani origin, this situation is exacerbated by the very high incidence of arranged marriages with partners overseas. A much slower rate of foreign immigration and tighter rules to discourage intercontinental marriages are essential if there is to be a reasonable prospect of achieving the degree of integration needed to maintain social harmony in Britain.

These communities are constantly being refreshed by new arrivals from the Sub-Continent, so most Pakistani and Bangladeshi children will have a mother born abroad. This is leading to the rapid expansion of ghettos. For these communities are constantly being shifted back by a generation; this is much less the case for communities of Indian and other origins. Migrants are now expected to demonstrate English language ability and knowledge of life in the UK before being granted

20 M. Ziola, *op. cit.*, p. 18.

21 K. Fiałkowska, J. Wiśniewski, *op. cit.*, p. 8.

settlement. This can be done either by completing a course and demonstrating progress from one level to the next, or taking the ‘Life in the UK’ test.

Fifty years after the start of mass immigration to the UK, questions are still being asked about whether or not the UK can become a multi-ethnic society with itself or whether there is still a long road to be travelled. In a 21st century Britain, the ethnic, cultural and religious diversity is a welcome social fact: it is undeniably true that Britain is a multicultural society. While there remain big differences between metropolitan and non-metropolitan Britain, and differences of opinion over the question of immigration, the fact of diversity is now accepted as a positive state of affairs by the overwhelming majority of people living in Britain.

5.2. Political rights of foreigners in the United Kingdom

The British political system is further characterized by its Westminster model of governance. Firstly, its electoral system is characterized by its single manner, simple plurality system or “first past the post”. Consequently, this means that parties win seats if they have strong local support and are in a position to win a majority of seats and form the government if this support corresponds to other constituencies. This means that local minority interests face a lot of difficulty gaining representation even though they may have a large national percentage of the votes, as has been the case with Liberal Democrats. This system thus consolidates and stabilizes the existing party system and resists and deflects major movements for change. Secondly, the system tends to over-represent the public support for the major parties and enhances the effects of electoral success. The chances are in other words high that either of the major parties will achieve a single majority in the parliament and such enjoy a considerably stronger position than in the countries with proportional representation.²²

22 P. Odman, *op. cit.*, p. 105.

That kind of electoral system enables national parties to ignore many political movements and their demands. However, once they gather enough national support this will generate a succession of changes in a short period at time and for consecutive period of time they do not need to follow these political movements and demands. The Westminster system serves as a filter to reduce the number of parties competing for votes by restricting effective parliamentary representation to mainly two parties.²³

The crucial issue which requires some explanation is who is eligible to vote and to stand as a candidate in the United Kingdom. The multi-seat electoral system used in the Republic of Ireland ensures every voter has a direct link not to one, but from three to five members, directly elected by their constituency. Full political rights (encompassing a range of entitlements beyond voting rights) in Britain are only secured if an immigrant becomes a UK citizen. This requires a minimum of five years legal stay in the UK, of which at least one year must be classified as indefinite leave to enter or remain.

The immigration status conferred to a person who does not hold the right of 'permanent abode' but who has been admitted to the UK without any time limit on their stay and so is free to travel to and from the UK, and to take up employment or study and so forth without restriction. So, while full social and political rights, including access to social welfare, are only secured if an immigrant becomes a UK citizen, people with 'leave to enter' or with 'leave to remain' in Britain are entitled to vote. These permits may cover any period of time between three months to many years but exclude a person who has entered the country illegally.

People from European Union member states irrespective of immigration status may vote in local elections and in elections for devolved assemblies (Wales, Scotland, Northern Ireland, and the City of London) but not in national elections. Conversely, British citizens living abroad can register as overseas electors and are eligible to vote in the UK and European Parliamentary elections for up to fifteen years

23 *Ibidem*, p. 105.

after they have left the country. Of special importance to contemporary questions of migration management and integration in the UK are recent developments in civil rights and immigration legislation.²⁴ Until 1996 asylum seekers, for instance, were basically free to choose their place of residence; they had access to (social) benefits and were entitled to work. The Immigration and Asylum Act of 1999 introduced a refugee dispersal model for the whole country as well as minimum provisions under the NASS (National Asylum Support Scheme), while cutting them off, simultaneously, from migrant communities' support concentrated mainly in the London area.²⁵

While analysing the participation of foreigners in political life in the United Kingdom it can be stated, taking into consideration the data presented in Migrant Integration Policy Index MIPEX of 2007 that the third-country citizens legally residing on the territory of the United Kingdom enjoy favourable policy in the scope of the access to citizenship. As regards political freedoms, the United Kingdom is among the countries of best practices. This country allows migrants to join political parties and to create organisations. Migrants' organisations may benefit from public subsidies and support but under special conditions. The state also actively informs migrants on their rights (the information has been prepared in many languages). A weak point is the fact that migrants or their organisations are not formally consulted at any governmental level.²⁶

Equally determinant of the living conditions of foreign-born people in the UK is the racial equality and anti-discrimination legislation and its strong tradition of civil rights. Even if the first Race Relations Act of 1965 proved to have a merely declaratory nature, its succeeding amendments in 1968 and 1976 went much further. In 1968 the Commission for Racial Equality (CRE) was established and gradually provided with statutory powers. The failure of the legal and

24 E. Stewart, *The integration and onward migration of refugees in Scotland: a review of the evidence*, "New issues in refugee research, Research Paper" No. 174, p. 1.

25 F. Düvell, *Active civic participation of immigrants in the United Kingdom*, Report prepared for the European research project POLITIS, Oldenburg, <http://www.politis-europe.uni-oldenburg.de/download/UK.pdf>, [online 15.7.2012], 2005, p. 18.

26 *Ibidem*, p. 19.

institutional framework resulted in the enacting of the Race Relations Act of 1976 which made discrimination on grounds of colour, race, nationality or ethnic or national origins unlawful, but not on the ground of confession or religious belief. It should be noted that religious communities in the UK could rely on the Race Relations Act only in so far as they constituted an ethnic community. The Act covered all areas of employment, housing and urban planning and introduced the distinction between direct and indirect discrimination, and legal remedies (compensation), giving people individual access to British courts.

The last modification of the Race Relations Act dates back to 2000, when the Race Relations Amendment Act came into force, obliging public authorities to promote race equality. Public authorities in the UK now have a general duty to abolish racial discrimination and to promote equal opportunities and good relations between members of different 'racial groups'. Moreover, the Act empowered the Secretary of State to impose specific duties on key authorities in the public administration. The relevant authorities are obliged to publish and implement the Race Equality Scheme which functions effectively as a strategy and action plan, setting out the relevant policies and actions to promote race equality.²⁷

The context of the UK's immigration policy was changed by New Labour's agenda for modernizing Britain. Its priorities could be summarised as inclusion into the labour market, the creation of a business friendly environment, and the establishment of an effective and flexible public sector. Britain's modernisation process has been accompanied by major cultural shifts, affecting the area of immigration. In this respect, 8 September 2005 could be interpreted as a turning point in UK's migration management, when Immigration Minister Barbara Roche revised the hitherto quite restrictive approaches of British immigration policy and emphasised the positive economic, cultural and political aspects of migration²⁸. Media debates on immigration in

27 E. Currie, *Migration in Europa – Daten und Hintergründe*, Stuttgart, 2004, pp. 123–160; F. Düvell, *op. cit.*, pp. 4 and 18–19.

28 F. Düvell, *op. cit.*, p. 14.

contemporary Britain, in the wake of terrorist incidents, are dominated by discourses on illegal immigration, asylum and the shortcomings of the UK's immigration control system. The previous positive perception of economic migration has been put in question. Instead the need for firm controls on Britain's liberal migration policies is stressed²⁹.

The UK, it could be concluded, orientates itself towards a multicultural and pluralistic integration scheme. In comparison with other countries following a pluralistic approach, like Sweden or the Netherlands, the main focus is on the civic self-organisation of migrant groups and the enforcement of fairness principles, while the public sector assumes a secondary role in welfare benefits and direct support for minority groups. In general, the UK appears ethnically more diverse than ever: 54 different ethnic or national groups numbering more than 10,000 people could be identified, showing a certain residential concentration in England (9% of the population) and London (19%).³⁰

The political representation of migration concerning minorities in Britain occupies an important place in public debates on society wide representativeness, politicisation and inclusion, as well as quality of democracy. Although political representation of migration-related minorities has been rising, at present, the proportion of minority representatives holding elected office does not sufficiently reflect Britain's ethnic diversity. Analysing the statistics and the ethnic origin of the members of the British Parliament it may be noted that minorities' distrust of the political process tend to increase when mainstream political parties do not attempt to take their interests on board. In addition, ethnic minority Parliamentarians are frequently contacted by ethnic minority electorate from outside their ward on the presumption that they are more likely to respond to their concerns.

Unfortunately, an active participation of ethnic minorities is still inconsiderable. Although in the recent years some progress has been made on increasing the level of involvement, it may be observed that

29 E. Currle, *op. cit.*, pp. 123–160, Düvell, *op. cit.*, p. 4.

30 F. Düvell, *op. cit.*, p. 4; Europaforum Wien (ed.), *Migration und Integration*, Vienna, 2002, pp. 90–95.

political parties want ethnic minority votes but not ethnic minority opinions.

The formal political participation of ethnic minorities by means of voting is inevitably based on their levels of electoral registration. If a section of the population is underrepresented on the electoral register, the level of turnout will not offer a reliable account of formal political participation. Young people are more likely not to be registered to vote than older people, and because the age profiles of minority communities, particularly the Pakistanis and the Bangladeshis, are substantially lower than those of white people. In addition, some ethnic minority communities are disproportionately affected by the lower levels of registration among younger voters.

Other factors affecting ethnic minority registration include an unfamiliarity with institutions and procedures, language difficulties, concerns over anonymity and confidentiality, fear of harassment, administrative inefficiency, and anxieties over residence status.

Given the transitory nature of contemporary migration from EU accession countries, these patterns of residence are being replicated, although we are yet to generate large scale meaningful data on this. Where the research has sought to ascertain why ethnic minorities are disproportionately not registered, rarely has it reported that they do not want to participate in politics.

The changing levels of ethnic minority electoral registration illustrate the progress that has been made since the early 1960s, albeit in varying degrees across and within different communities. Specific initiatives in certain local authority areas have shown that there is scope for significantly increasing registration levels among ethnic minority communities.

While it is clear that ethnic minorities share similar concerns to the wider electorate on matters such as education, health care, crime, unemployment and so forth, they also have specific concerns about the operation of racial discrimination in these very areas, as well as the impact of immigration policies, and, obviously, transnational and international issues. Studies have highlighted experiences of

discrimination and frustration centering on the failure to represent issues of concern or to allow equal access to positions of power, or to promote and support minority candidates. One particular complaint concerns the suspicion that ethnic minority candidates are only given non-safe, non-winnable seats, so that while procedures themselves can be non-discriminatory the pool of talent from which elected politicians are drawn will be limited. Consequently, only 15 out of 643 Members of Parliament are of ethnic minority background, 29 peers are members of the House of Lords, and 662 were local councilors before the 2008 local elections (3% of 21,498 councillors in England and Wales).³¹

This situation has prompted the conclusion that political parties want ethnic minority votes but not ethnic minority opinions, and it is plausible that where mainstream political parties do not attempt to take minority interests on board, that this can lead to their distrust of the political process. It has long been argued that the political participation of ethnic minorities in Britain is affected by the policies and initiatives taken by the political parties to promote this very participation. These policies and initiatives include special arrangements to attract ethnic minority support, party manifesto commitments, and most substantively, the number of ethnic minority candidates and elected MPs and councillors. The 2005 General election witnessed a small increase in the number of ethnic minority MPs to 15. This is well short of the 51 MPs from ethnic minority backgrounds that would in a sense reflect the proportion of ethnic minorities in Britain's overall population, and that corresponds to 8% of total.³² There is a widespread insistence on the link that exists between electoral participation and the promotion of ethnic minorities in the democratic process. A frequent illustration is that ethnic minority Parliamentarians are contacted by ethnic minority electorate from outside their ward on the presumption that they are more likely to respond to their concerns. This habit allows room for narrow group-specific claims that essentially undermine the

31 *Ethnic minorities in Britain*, <http://www.housingcare.org/downloads/kbase/2056.pdf>, [online 21.7.2012].

32 J. Squires, *Gender and Minority Representation in Parliament*, http://www.geog.qmul.ac.uk/pe-dec/documents/Squires_MinorityRepresentation%20-%20to%20print.pdf, [online 5.9.2012], pp. 82–84.

development of political representation on a wider and more integrated basis.

It has been argued that the direct link provided between voters and their local Member of Parliament in Britain's current 'first past the post' (FPTP) voting system would be lost if certain systems of proportional representation were adopted. This need not be the case, however, if a hybrid proportional representation electoral system was used such as the Additional Member System (used for the Scottish Parliament and Welsh Assembly) or alternative vote top-ups.³³

The political representation of migration related minorities in Britain occupies an important place in debates around political participation across the society. However, at present the proportion of minority representatives holding elected office does not sufficiently reflect Britain's ethnic diversity. One means of addressing this would be to exclude political parties' selection of Parliamentary candidates from the application of Race-Relations Act (1976 as amended in 2000 and 2003) which prohibits the selection or promotion of candidates (in any form of employment) based upon racial or ethnic grounds. This would allow for the creation of shortlists to choose from on the grounds of ethnicity in the selection of parliamentary candidates (this would be voluntary and would not oblige or compel parties in any way).³⁴

Best practice should be replicated in a way that is consistent with the values of each political party. For example, the Labour Party uses an approach of 'zipping' which means that as a minimum each constituency ward has to nominate at least one woman and one ethnic minority candidate. This could be satisfied by nominating a woman of ethnic minority background (some wards may nominate two women and others might nominate one woman of ethnic minority background and two men).³⁵

33 Electoral Reform and Voting Systems, <http://www.politics.co.uk/reference/electoral-reform-and-voting-systems>, [online 13.7.2012].

34 R. Zapata-Barrero, R. Gropas, *Active Immigrants in Multicultural Contexts: Democratic Challenges in Europe*, (in:) A. Triandafyllidou, T. Modood, N. Meer, *European Multiculturalism(s)*, "Cultural, religious and ethnic challenges", Edinburgh: Edinburgh University Press, 2012, p. 177.

35 T. Modood, N. Meer, *Minorities and political life in Britain: Increasing political participation through representation*, "EMILIE Research Project", 2009, p. 4.

The action of this type may be described as positive discrimination. It means that certain social groups are given a privileged position. The fact that they are somewhat compulsorily assigned on the election register results in a positive outcome i.e. it engages representatives of ethnic minorities in formation of the British policy.

These are rules which are nationally implemented by the Labour Party, so that each ward will have the right to nominate three people for the long list before it goes to the shortlist. Naturally, if over 50% of the proportion of the membership votes for one candidate then that candidate automatically joins the shortlist of four to eight prospective candidates. In this context, developments in the House of Lords have been particularly instructive. The House of Lords has seen its number of ethnic minority Peer leap from 5 in 1997 to 29 today. This resulted from a combination of both political appointments and open access applications from individuals active in civil society. Finally, all political parties should seek to expand these practices in a way that will have real and sustainable outcomes geared towards improving the levels of ethnic minority political participation and representation in mainstream politics at all levels – from the local, to the national and the European.³⁶

In the United Kingdom where the migrants are integrated as individuals, efforts have been made to incorporate these groups through facilitating labour market participation and enforcing antidiscrimination legislation.

5.3. Local integration policy in the United Kingdom

At a local level, Britain displays an interesting scenario of centralized control and local self-governance. The central government relies on the local government and so-called Quangos to implement its programme in detail and also exercises a degree of control through the parliament. However, the central government relies heavily on local initiatives to go forward with decided decision but does rarely

36 T. Modood, N. Meer, *op. cit.*, p. 4.

intervene (apart from requesting compliance and progress reports). The central government also faces further complications of control given that local elections take place over a three-year period and serve as a form of mid-term test of government popularity, and as such can create a situation in which the party in power locally is not the party in power centrally.³⁷

The number of immigrant flows and settlements has been increasing for the last fifty years. The political debates around integration that accompanied these flows have often been fraught and destabilizing, reflecting a deep-seated ambivalence about immigrants and immigration in British society.

Local or neighbourhood integration (sometimes dubbed community cohesion or social cohesion) is best understood as successful, harmonious communities, defined as those that are safe and where residents coexist harmoniously and demonstrate respect for one another.³⁸

At a local level, policies have contributed to successful communities, especially through area-based funding programs. However, again we have seen specific policies to help newcomers lack sustained funding or prove inadequate to the scale of arrivals. Moreover, the public narrative assigns long-term negative impacts of immigration on communities when the academic evidence suggests it is negligible or even positive.

Immigration to the United Kingdom is likely to continue at relatively high rates. A substantial new generation will emerge from current and future influxes. Already, more than half of London's school-age pupils are the children of immigrants. The case for a well-thought-out approach to lowering the barriers to integration is clear.

37 P. Odmalm, *op. cit.*, p. 106.

38 M. Bommès, H. Kolb, *Economic Integration, Work, Entrepreneurship*, State of the Art Report Cluster B4 (Osnabrück, Germany: Institute for Migration Research and Intercultural Studies, 2004), 5, www.eukn.org/dsresource?objectId=147405, [online 18.8.2012], M. Banton, *National Integration in France and Britain*, "Journal of Ethnic and Migration Studies" 27, No. 1, 2001, pp. 151–52., S. Saggat, W. Somerville, R. Ford, M. Sobolewska, *The Impacts of Migration on Social Cohesion and Integration*, London: Migration Advisory Committee, 2012.

Equally clear is the need to nest that approach in the history and context of British practice.

Integration which is undertaken at a local level is closely connected with the idea that different groups cannot only coexist harmoniously in local communities, but can also thrive regardless of differences between them. In public opinion surveys, people almost unanimously agreed (across ethnic and social groups) on the ingredients necessary for successful communities: respect, understanding, awareness, trust, safety, friendliness, and stability.

In ascertaining whether or not the presence of immigrants (and how they are doing) affects how much a community is deemed cohesive, we rely heavily on a set of opinion polls and academic survey questions with a variant on one particular theme. This is a probing opinion on whether groups (not immigrants) do actually coexist harmoniously. The most regularly asked question is: “Do you feel that, on average, people in your neighbourhood get on better or worse than they did a year ago?”³⁹

Academic analyses of the datasets that are produced by this question show that the most important predictors of unsuccessful communities are not immigration but socioeconomic deprivation and the quality of public services. In other words, the poorer the community, the less people feel it is integrated – irrespective of the presence of immigrants. Lack of economic resources is seen as the factor most responsible for patterns of atomization and community disintegration.⁴⁰

Views on neighbourhood or local integration (cohesion) are therefore driven by poverty levels and public service delivery, and not by immigrants themselves. However, this does not mean that a sudden influx of immigration will not cause local issues and negatively affect social cohesion. Immigrants may, for example, affect community stability or be perceived to drain public resources. For example, a rapid influx of newcomers entails lower per person funding of public services, and for major influxes there is inevitably going to be

39 R. Putnam, E Pluribus Unum, *Diversity and Community in the Twenty-First Century*, “Scandinavian Political Studies”, 30 (2), 2006, pp. 137–174.

40 *Ibidem*, pp. 137–174.

significant and difficult adjustment. However, in the longer term there is no evidence that immigrants or the diversity they produce negatively affect neighbourhood cohesion.⁴¹

There are important insights here for the management of immigration. For instance, where opinion regarding immigrants in local communities is particularly sensitive, it is useful to know how far this is connected to the scale or proportion of immigrant settlement. It may be that the crucial destabilizing factor is not absolute numbers but rather the rate of settlement across relatively short time periods. This is borne out in polling evidence that highlights the rate of population change as driving local patterns of hostility toward immigration. This, again, will have ramifications for the adaptability and responsiveness of public services (additional school places, expanded primary health services, etc). Where responsiveness is poor, there are clear risks to community relations.

The city of Birmingham is an example of coherent integration policy at a local level. Birmingham is the UK's second largest city (after London), with more than one million inhabitants. Members of minority groups represent approximately 30% of the total population, peaking at 50% of pupils starting school in 2000. Members of ethnic minorities in Birmingham are mostly of the second and third generations, whose parents are of Indian, Pakistani, Bangladeshi, Caribbean or Chinese descent. Given the permanence of citizens with foreign backgrounds, the integration of newly arrived migrants plays a secondary role in Birmingham's integration policy⁴².

The situation of ethnic minorities in Birmingham is remarkable in two ways. Firstly, the city's ethnic minority population is among the largest, most diverse and most well established in Britain (with the exception of London). Secondly, Birmingham is arguably one of the cities in Europe where immigrant participation in local debates and local decision making process is the most successful, to the extent that

41 S. Saggar, W. Somerville, *op. cit.*, p. 10.

42 Europaforum Wien, *op. cit.*, p. 95.

one can speak of a real process of empowerment of ethnic minorities in the city.⁴³

At the local level in Birmingham itself, the incorporation of minorities has taken three main forms:

1. Participation in the Labour Party and local electoral politics with a large number of ethnic minority councilors entering the council.
2. A high level of community organization with around 300 local groups.
3. Institutionalisation of ethnic groups within a consultative structure and through social services run by ethnic minorities.⁴⁴

Process of the empowerment of minorities in Birmingham has been partly triggered by national trends, which have encouraged local authorities to take an interest in ethnic minority populations and to tackle racial discrimination.

The main vehicle to participation was the Labour Party. The Labour Party has on whole been sympathetic to ethnic minorities in all the major British cities. The fact is that the Labour Party definitely dominates in Birmingham thus it plays a crucial role in the process of foreigners' integration.

Birmingham shows a long history of adapting its city institutions to its race relations policy, which dates back to the end of the 1960s. At that time the 'Birmingham Community Relations Council' was created, formalising relations between the municipality and the existing migrant associations. Already in 1983/1984 the city had committed itself to ethnic monitoring and equal opportunity employment, and a Race Relations Unit within the city administration had been established. In the following years, Birmingham experienced a rise in the employment of people with migration backgrounds in public authorities to 20%, the implementation of annual equality schemes in the city administration,

43 R. Garbaye, *Birmingham, Conventional Politics as the Main Channel for Political Incorporation*, (in:) A. Rogers, J. Tillie (ed.), "Multicultural Policies and Modes of Citizenship in European Cities", Burlington, 2001, pp. 85.

44 *Ibidem*, p. 86.

the introduction of contract compliance and strict adherence to an anti-discriminating policy, especially in the housing sector. Nowadays the Race Relations Unit is the biggest institution of its kind in Britain, employing its own 'Equality Officers'. The adaptation of Birmingham's administration to its ethnic heterogeneity was, however, troubled and lengthy. In addition to various political and internal implementation barriers within the city administration, the mid-1980s were marked by social tensions making Birmingham a focal point for riots throughout the UK.⁴⁵ In particular, participation in the Labour Party enabled ethnic minorities to obtain a significant representation at the City Council, because the Labour Party has been overwhelmingly dominant in the city since the early 1980s. This has been instrumental in facilitating the participation of ethnic community groups in local public life, particularly through the Standing Consultative Forum (SCF)⁴⁶, created after violent riots in 1985 shook the Council into action, and through groups and institutions such as the Muslim Liaison Committee in 1983, or a various social service run by ethnic minority groups. Nowadays the SCF could be considered the most important instrument for the involvement of minorities and as a coordination tool between urban policy, city administration and minority groups⁴⁷.

In the mid-1990s the exemplary 'model Birmingham' came under the spotlight, as ethnic group membership as the organisational principle for its urban equality policy was questioned. The increasing internal differentiation of Birmingham's migrant population, the special needs and demands of its second and third generations, representation by mainly old and male community 'leaders', and the existing relationship of patronage between the SCF and the city led to the redefining of Birmingham's diversity policy.

In 1996 the Race Relations Unit, the Women's Unit and the Disabled Unit were consolidated into an overlapping 'Equality

45 M. Borkert, W. Bosswick, F. Heckmann, D. Lüken-Klaßen, *Local integration policies for migrants in Europe*, "European Forum for Migration Studies", Bamberg, Germany, 2007, p. 39.

46 The Community Relations Council (considered to have failed) was abolished and changed into the 'Standing Consultative Forum' (SCF), formed by ethnic and religious umbrella organisations in 1987 and 1990.

47 Europaforum Wien, *op. cit.*, pp. 96-97.

Division', responsible to the City Council's board on equality matters. This modification followed the new assumption that in a highly diversified urban context like Birmingham combinations of disadvantages were most likely to be found. This marked the starting point for a new issue-oriented anti-discrimination and equality policy in the city. In this context the consultative system with the SCF, based on an ethnic group classification, lost its support and was substituted in 1999 by the 'Birmingham Race Action Partnership' (BRAP) which coordinated the roles of people involved in different issues. The BRAP draws together competent representatives from the social services, departments of the city administration and migrant associations, aiming at involving them equally in decision-making processes. Moreover, the City of Birmingham provides opportunities for communication, especially to women and adolescents with migration background⁴⁸.

In terms of single actions, the city administration continues to employ people of migrant background at the local level, implementing cultural mainstreaming in all services, and seeks contract compliance. Having reached the target of a 20% employment rate for ethnic minorities in the city administration, Birmingham's positive actions today aim at balancing the under-representation of migrant groups such as the Pakistanis and the Bangladeshis, and at facilitating the advancement of minority group members into important positions in local authorities. Individual city offices show marked variations in engaging people with migration backgrounds, from a 12% employment level in the city planning department to 34% in social services.⁴⁹

It can be concluded from the aforementioned analysis that political participation of foreigners does not constitute an essential integration factor. It is mainly due to the fact that foreigners coming on the territory of the United Kingdom focus on the improvement and then on the stabilisation of their economic situation. Only then, in a long-term perspective they are willing to participate in political life of the United Kingdom. A question can then be posed: are they still foreigners or the British with a foreign origin?

48 *Ibidem*, pp. 97–98.

49 *Ibidem*, p. 98.

Simultaneously, certain conditions are created for ethnic minorities to enable them to shape the policy at local and state government level actively. Interestingly and typically enough, it is the political parties that perceive foreigners as a significant number of voters thus undertake some actions targeted at engaging ethnic minorities.

FINAL REMARKS

It can be stated after having analysed the legal solutions on political participation of foreigners in Poland, the Federal Republic of Germany and the United Kingdom that apart from creating legal grounds which would enable foreigners to participate in the political life of the receiving state, the involvement of foreigners themselves is also significant. The identification with the receiving state is of key importance here.

Polish authorities do not see a need to promote immigrant activism. The authorities are not interested in issues associated with integration, only in migration policy understood as labour market access and border control. The organizations' representatives stress, however, that the NGOs/third sector, including immigrant organizations, is being consulted more and more often. Undoubtedly, "Multicultural Warsaw" is a good example here. Such initiatives are however still incidental. The necessity of continuous work to improve the situation and to increase the level of multicultural dialogue must be emphasized.

On the one hand, quite frequently one statement may be heard: „They expect us to go to them because they do not look for us.” in the context of integration actions. On the other hand, according to interviewees, Polish administration offices do not provide adequate information about residence and work permit procedures. The same inadequacy exists regarding information on naturalization procedures – possessing such information would allow an immigrant to plan their stay in Poland appropriately.

Intercultural dialogue and meetings are very effective forms of civic engagement as they allow for exchanging opinions and getting to know each other. Moreover, some immigrants should be granted voting rights (just active, or both active and passive) at least in local elections. Immigrant participation in local elections would draw the attention of political parties to immigrant issues. Voting rights should be granted

to those who have lived in Poland for an adequately long time and understand the Polish reality. Alternatively, the NGO sector should be supported in such a way that effective actions orientated towards (one's) own minority group become possible. Immigrant organizations, in respondents' opinions, should have an easier access to available funds, similarly to organizations representing ethnic and national minorities in Poland. The immigrant perspective would be better heard then: The goal is to be heard; to speak for ourselves in debates.¹

Discussing the experience of Germany and the United Kingdom it needs to be noted that different types of consultative and advisory bodies (especially at local level) play a considerable role in the process. Obviously, it can be stated that in practice their influence is insignificant. It needs to be emphasized however that they frequently constitute an indispensable forum for exchanging experience and opinions. They provide an opportunity to get to know the mechanisms of exercising authority, the principles of public administration functioning, which may be a considerable capital in the involvement of foreigners in political life later (e.g. after obtaining citizenship). A crucial difference resulting from the specificity of local government is that in the United Kingdom and the Federal Republic of Germany, in contrast to the situation in Poland, some specific initiatives taken by local authorities can be observed which aim at involving foreigners in political life. In Poland, even if such actions are undertaken, they are not impressive examples which would bring measurable benefits.

The issue of citizenship and the way a particular country defines the notion of citizenship are very important factors in real participation of foreigners in political life. If the receiving state opted for a broad definition of citizenship in which sub-collective identities are considered as natural elements of the national identity, then the process of identification would, theoretically, be facilitated.

It seems that a full participation of foreigners in political life of a particular country is also dependent on economic factors. When foreigners are provided appropriate standards of living they stop

1 K. Gmaj, K. Iglicka, *op. cit.*, p. 4.

worrying about their living conditions and undertake social actions in the area of political involvement. It is then crucial how law allows for active participation in forming the policy or creating the law itself. In the countries which have been analysed in the present publication, in most cases the possibility of participation in politics is connected with holding citizenship. On the other hand, granting a citizenship, at least in formal sense, is considered as obtaining the highest level of identification with the society of receiving state.

It is an unresolved dilemma whether obtaining citizenship of a particular state by a foreigner is a measure of integration or its objective. Maybe it could be better to call it “final outcome” of the whole integration process. Therefore, it can be concluded that involvement of citizens in political life dependent on possessing citizenship will not be an instrument of integration but merely the outcome of the integration achieved to some degree so far.

The aforementioned analysis leads to the conclusion that to obtain effective political participation of foreigners some actions need to be taken also at the European Union level. The European Union does not possess any legal instruments which would impose uniform standards of election law (e.g. introducing the regulation which would enable foreigners to participate in elections actively). Nevertheless, harmonisation in this matter should be grounded in so-called “soft measures” which mean the coordination of actions in the scope of forming the surface of interstate consultation. It needs to be emphasized that if any state introduces some limitations in the area of foreigners’ participation in political life, the barriers most often result from the acts of highest rank (e.g. the Constitution). The process to amend these normative acts is lengthy and complex. One cannot ignore the fact that if there is some pressure put (for example from the EU level) to introduce some amendments, the outcome may be just the opposite. States which fear for losing some discretionary competences may retard possible proposals for amendments. It seems that Germany is a perfect example that political rights should not always depend on the fact of obtaining e.g. citizenship as administrative procedure (including the test) is difficult to go through. It therefore seems to be rational to condition obtaining voting rights by the duration of legal residence not

only from administrative confirmation of the foreigner's status on the territory of receiving state.

Integration is a process in which it is difficult to distinguish particular stages, the beginning or the end. It is not justified to refer to full integration or merely partial one. Undoubtedly, a foreigner who feels a bond with a receiving state should have a possibility to participate in its political life. Some conclusions may be drawn from extensive experience of Germany and the United Kingdom. Namely, it is necessary to extend this process in time. A foreigner should be encouraged by existing possibilities and not discouraged by arising difficulties. The following remarks might also be made for Poland. It is indispensable to analyse and examine the solutions exploited in the countries which have already been confronted with the problem of multiculturalism and a considerable number of foreigners. In some perspective, these problems will also refer to Poland thus it is crucial to follow the patterns (bearing in mind significant systemic differences) of other, more experienced in this respect, countries.

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