

Some reflexions on the minority rights in interwar and contemporary Poland

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Abstract: The paper examines the situation of minorities in the March constitution, framing it in the history of Polish law. Attention is paid to Polish peculiarities in the context of Central and Eastern European countries. The particular profile of the protection of linguistic rights is analysed.

Keywords: national minorities, March Constitution, diachronic analysis, comparison with Eastern countries, protection of linguistic rights.

I.

Poland in the interwar period was a fairly typical country in Central and Eastern Europe of the time. It was a very heterogeneous country, inhabited for generations by multiple and internally diverse religious, national, ethnic or linguistic minorities. The multinational composition of states in this latitude after World War I was a common phenomenon, although Poland occupied one of the first places here. For centuries, either nationality groups were absorbed during new territorial conquests, or settlers themselves settled in the territories of other nations. The basic criterion was for many centuries the loyalty of the representatives of minorities to the ruler, and if this condition was fulfilled, minorities were not a problem in themselves. Coexistence of different nationalities was a feature of the Eastern Borderlands and accounted for the remarkable cultural and social diversity of this area. It was not until the middle of the 19th century that this began to change, people started to notice these differences. In the case of many nationalities a national identity began to form in opposition to Poland and the Poles, these differences were often skilfully and perfidiously fuelled by politicians and people who counted on the benefits derived from inspiring feuds, as well as the activities of other countries (such as Bolshevik Russia).

Modern Poland, on the other hand, is a very homogeneous country in terms of nationality, which was influenced not only by the Holocaust, exterminations, by the way the borders were drawn up after World War II, but also by the many actions associated with the mass displacement or

resettlement of thousands of people after the war. Contemporary Poland is also not an example of a multicultural country because, as a post-Communist state, the country is not attractive to many immigrants. Such people treat our state as a “transit” country, and as a destination they choose Western European countries – richer and highly industrialized, providing good social care and friendly integration of immigrants into their societies.

II.

According to the 1921 census, Poland had a population of 27 million, of which Poles accounted for approximately 69%. The most numerous national minorities were Ukrainians (14%), Jews (8%), Byelorussians (3%) and Germans (3%). However, it is difficult to determine the exact percentage figures. When the first census was conducted, the borders were still being formed. Moreover, some people, consciously or not, associated the category of nationality with the concept of citizenship. Many Jews, for instance, considered themselves “Poles of the Jewish faith”¹.

The main acts which gave a protection to the minorities at that time were:

- **the March Constitution of 17th of March 1921**; of particular importance were Articles 109, 110 and 111, which were incorporated into the Constitution on the basis of the obligations arising from the minority treaty;

- **the Little Treaty of Versailles i.e. the Treaty for the Protection of Minorities concluded in Versailles** on 28 June 1919 by Poland with the five great powers. For the protection of minorities especially important were articles: 2 , 7, 8,9,10 and 11.

- **The Upper Silesian Convention**; signed on May 15, 1922 in Geneva, which especially guaranteed the rights to the German minority² ;

- **The 1921 Treaty of Riga**³ - the rights of the Russian, Belarusian and Ukrainian minorities were also secured by the peace treaty between Poland, Russia and Ukraine concluded on 18 March 1921 in Riga;

¹ Cf. <https://cbs.stat.gov.pl/> (13.07.2021). Cf. also: <https://spis.gov.pl/historia-spisow> (8.06.2021).

² Cf. B. Stoczewska, *Mniejszości narodowe II RP w świetle konstytucji oraz innych aktów prawnych*, p. 670; [Mniejszości narodowe II RP w świetle konstytucji oraz innych aktów prawnych \(uj.edu.pl\)](#) (14.07.2021), p. 671.

³ Cf. A. Krasnowolski, *Prawa mniejszości narodowych i mniejszości etnicznych w prawie międzynarodowym i polskim*, p.11 (in:) BIURO ANALIZ I DOKUMENTACJI Zespół Analiz i Opracowań Tematycznych Kancelaria Senatu Marzec 2011 OT-599 OPRACOWANIA TEMATYCZNE Prawa mniejszości narodowych i mniejszości etnicznych w prawie międzynarodowym i polskim, [OT-599 \(senat.gov.pl\)](#) (14.07.2021).

- a **Bilateral agreement on legal and financial matters** between the Republic of Poland and the Czechoslovak Republic, signed in Warsaw on 23 April 1925 and valid for a period of 12 years; most of its provisions related to education and minority language rights.

Furthermore, also Polish **national legislation of the interwar period regulated the situation of minorities**⁴.

A wide range of issues related to religious legislation, including the affairs of minority churches, were regulated by a number of laws and regulations. The rights of minorities to use the national language in their relations with administrative authorities were guaranteed by language legislation. The most important were:

-**Act of 31 July 1924**; under this act the Polish language was recognised as the state language of the Republic of Poland. This meant that all government and self-government authorities, both in internal and external service, were to speak Polish. However, under Article 2 of this Act, Polish citizens of Ukrainian, Byelorussian, Lithuanian and German nationalities were allowed to use their mother tongues in the areas specified by the provisions of the Act in their relations with the civil administrative authorities and offices of the first and second instance, as well as with state and local government authorities⁵,

- **the Law on the System of Common Courts enacted on 6 February 1928 and the Law on the Official Language of Courts, Public Prosecutor's Offices and the Notary Office of 31 July 1924**; article 2 of the Law allowed the use of Ukrainian, Belarusian and Lithuanian in courts and public prosecutor's offices in the same areas as listed in the Law on the Official Language of Administrative Authorities. In addition, the use of these languages was allowed in the courts of appeal in Lublin and Vilnius in certain cases concerning the Volhynia and Polesie provinces.

To sum up this part of the text, national minorities living in interwar Poland were under legal protection, which resulted from international treaties signed by Poland and from domestic legislation. The practical difficulties related to respecting the rights of minorities at that time, the lack of consistency in creating a coherent nationality policy, resulted not only from the divergent positions on this issue presented by the main political groups. The problem of respecting the national rights of ethnic minorities was also faced by other states covered by international agreements, and was a widespread problem of that time.

⁴ Cf. B. Stoczewska, op.cit., p. 670. Cf. also A. Kupczyk, *Z badań nad polityką państwa polskiego wobec mniejszości narodowych i etnicznych po odzyskaniu niepodległości 11 XI 1918 roku*, p. 164, [Z badań nad polityką państwa polskiego wobec mniejszości narodowych i etnicznych po odzyskaniu niepodległości 11 XI 1918 roku](#), (14.07.2021).

⁵ Cf. B. Stoczewska, op.cit., p. 673.

Despite the conflicts that arose between the authorities of the Second Republic of Poland and national minorities, there has never been any formal introduction of legislation that would in any way prejudice the situation of other nations living in Poland during the interwar period.

III. Contemporary Poland and the protection of minority rights

Poland today is a country in which national and ethnic minorities constitute only a few percent of the population, and the proportion of such minorities in Poland compared to other European countries is one of the lowest in Europe. The **rights of minorities** and their legal status are currently regulated by the **1997 Constitution of the Republic of Poland**, in particular Article 35, which guarantees Polish citizens belonging to national and ethnic minorities the freedom to maintain and develop their own language and culture, preserve customs and traditions. Moreover, the Constitution provides national and ethnic minorities with the right to establish their own educational and cultural institutions and institutions for the protection of their religious identity, as well as the right to participate in the settlement of matters concerning their cultural identity. Furthermore, the status of minorities is regulated by the **Law of 6 January 2005 on National and Ethnic Minorities and Regional Language**⁶. In addition, relevant is the **Act of 5 January 2011 on the Electoral Code**⁷, which provides for the exemption of electoral committees established by national minority organisations from the requirement to exceed the 5% electoral threshold. **The Act of 7 October 1999** on the Polish language, in turn, contains a declaration that its provisions do not violate the rights of national and ethnic minorities. Another act regulating the status of minorities is the **Act of 7 September 1991 on the Educational System**, which stipulates that public schools and institutions should enable students to maintain their sense of national, ethnic, linguistic and religious identity, and in particular to learn their language and their own history and culture, and the **Act of 29 December 1992 on Radio and Television**, which stipulates that public radio and television programmes should take into account the needs of national and ethnic minorities. In addition, the **Polish Penal Code** provides for the criminalisation of ethnically motivated

⁶ Cf. A. Malicka, Status prawny mniejszości narodowych i etnicznych w Polsce – ustawa o mniejszościach narodowych i etnicznych oraz języku regionalnym The legal status of national and ethnic minorities in Poland – Act on national and ethnic minorities and on the regional languages (in:) Joanna Beata Banach-Guiterrez, Mariusz Jabłoński (eds.), Aktualne problemy ochrony wolności i praw mniejszości w Polsce i na świecie, Wrocław 2017, p. 56. [Aktualne problemy ochrony wolności i praw mniejszości w Polsce i na świecie \(bibliotekacyfrowa.pl\)](https://bibliotekacyfrowa.pl) (14.07.2021).

⁷ Cf. [Podstawowe prawa - Zapisy z Konstytucji Rzeczypospolitej Polskiej i właściwych ustaw - Mniejszości Narodowe i Etniczne \(mswia.gov.pl\)](https://mswia.gov.pl) (14.07.2021).

crimes, and the **Codes of Procedure** - administrative, civil and criminal – allow members of minorities to be assisted by interpreters.

It is worth mentioning that many Polish citizens, and residents of Upper Silesia, have for many years declared a Silesian nationality separate from the Polish, German, Czech and Slovakian nationalities. In the 2011 census, over 800 000 people declared their affiliation to this nationality. The 2021 Census is currently taking place in Poland, and the Silesian Autonomy Movement supports Silesians in declaring their Silesian nationality and using the Silesian language. It is interesting to note that one of the Silesian MEPs recently addressed the European Parliament in Silesian and regrettably the interpreter failed to convey the presented message⁸. The speech was intended to draw the attention of MEPs to the disregard of Silesians by the current Polish authorities, who claim that “there is no such nationality as Silesian, and its declaration is a camouflaged German option”.

The most visible problem in contemporary Poland, however, is the **status of sexual minorities**, whose rights, compared to the countries of Western Europe, are quite limited (there is no possibility to enter into civil partnerships or same-sex marriages). Many of Polish Local Governments adopt an LGBT-free zone resolutions, however, these acts have no legal force ; but only a symbolic meaning. The European Parliament, in its 2019 resolution, stated that *“the creation of LGBT-free zones, even if it does not involve the introduction of physical barriers, is an extremely discriminatory measure that restricts the freedom of movement of EU citizens”*.

The final problem to which I would like to draw attention is the current issue of **women's rights**, especially those from poorer backgrounds. On 22 October 2020⁹, the Polish Constitutional Tribunal handed down a judgment in which it declared unconstitutional one of the three grounds for legal abortion in Poland, holding that a provision which permits termination of pregnancy when prenatal tests or other medical grounds indicate a high probability of severe and irreversible foetal disability or incurable disease, is contrary to the constitution. The Constitutional Tribunal has therefore forced Polish women to give birth to seriously ill and damaged children, including those with lethal defects. The judgment is most damaging to women who are not wealthy, because those who are more financially well off simply travel en masse to the neighbouring Czech Republic or even to clinics in London to undergo such procedures, which are strictly regulated by Polish law. In Poland there is also a flourishing abortion underground which offers treatments under very diverse conditions, often dangerous to women's health.

⁸ Łukasz Kohout po śląsku w PE, <https://www.youtube.com/watch?v=aZ4RjJ3TOMw> (14.07.2021).

⁹ See case K 1/20, judgment of 22th of October, 2020.

IV. Conclusions

Interwar Poland and Poland in the third decade of the 21st century are two separate worlds in terms of minority protection. National, religious and linguistic minorities were very visible in interwar Poland. People functioned quite well within local communities. With nostalgia I return in my mind to the story of my late beloved grandfather, Jerzy Nazarewicz, who was an Orthodox Pole born of a Catholic mother and an Orthodox father. My great-grandmother came from the Prussian partition, but as a governess teaching Russian and German to Polish maids from the Eastern Borderlands, and as a young girl of eighteen who loved challenges and travelling, she set off into the unknown and settled in what is now Belarus (before the war, it was the very centre of Poland, like the city of Łódź today), and there she met my great-grandfather. Their son, and my Grandpa, told me about his visits to the birthdays of his Jewish classmates, who sometimes gave him maths homework, about his Belarusian nanny Hafrosi, who spoke *Chachłacki* and gave him milk straight from the cow, and about a Ukrainian farmhand who spoke a mixture of Belarusian and Ukrainian. He talked about his class at primary school, in Kamieniec Litewski, where the Jews outnumbered the Orthodox and Catholics by about 20% each, and about the hunting trips my great grandfather and his Father, an Orthodox Pole and businessman, went on with their friends, a Catholic pharmacist and a Jewish doctor. My Grandpa was my first teacher of tolerance and openness. I am a Catholic, but I sometimes go to an Orthodox church, out of respect for Grandpa's religion. My great-great-grandmother, nee Herring, was German, and my other great-great-grandmother, born in 1832, nee Göring, came from a Dutch family near Maastricht, and settled in Poland at a time when the Dutch were arriving to our land in large numbers.

Many Poles have such a "mixture" of nationalities, religious denominations and all sorts of otherness in their history. For centuries, Poland was a bastion of tolerance, especially when religious wars, counter-reformation, night massacres on a massive scale, and persecution of non-believers raged in the countries of Western Europe. I believe that this beautiful tradition, rooted in our hearts, will, in the long term, make it possible to build Poland as a state free of discrimination, xenophobia and fear of otherness of any kind.

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