

Minority rights protection in interwar and contemporary Poland: a comparative perspective

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Abstract: The essay examines the condition of minorities in the March constitution, noting how this condition has never been easy in the history of Polish law. The difficulties were not resolved by the 1921 constitutional text and, albeit with ups and downs, they were substantially maintained even in subsequent eras, after the Second World War.

Keywords: national minorities, historical evolution, difficult coexistence, March Constitution, subsequent periods (1930s and World War II).

Poland became multi-ethnic since mid-14th century due on one side, to the immigration of Jews and other peoples who in the later middle ages were pushed out by economic situation and political persecutions from Western Europe. On the other one due to different processes of territorial expansion. The most relevant enlargement took place in 1385 when concluding the Treaty of Krewo the Kingdom of Poland and the Grand Duchy of Lithuania created a personal union that, after the concept of J. H. Elliot¹, may be defined as a ‘composite monarchy’ since, its members «were ruled by the same dynasty, but each country maintained its own legal system and local customs»². After further territorial acquisitions the «personal union» through the Treaty of Lublin in 1569 was transformed in a «real union» where «the nobility of Poland and Lithuania could elect «their monarchs by common royal election and convened the Diet together»³. Therefore, according S. Koyama this polity could be better describe as a «‘composite republic of the nobles’ rather than a ‘composite monarchy’, because the throne was elective and the royal prerogative was restricted to a large extent by the privileges of the nobles»⁴.

¹ J. H. Elliot, *A Europe of Composite Monarchies*, in *Past and Present*, 137 (1992) 48-71.

² S. Koyama, *The Polish-Lithuanian Commonwealth as a Political Space: Its Unity and Complexity*, 2007, 138, in https://src-h.slav.hokudai.ac.jp/coe21/publish/no15_ses/08_koyama.pdf

³ S. Koyama, *supra*, 139.

⁴ S. Koyama, *ibidem*.

The Union of Lublin was officially called *Rzeczpospolita Obojga Narodów* in Polish (*Res Publica Utriusque Nationis*), i.e. the «Republic of both people», but the literature mostly refers to it as the “Polish-Lithuanian Commonwealth” in order to underline the presence of federative elements in the same or as the “Republic of the Nobels” with the aim to point out the role played by the *szlachta* in its institutions and, consequently, its estate character. Nevertheless there are some authors who used the literal translation as J. Jakstas, but even this author not in the title of his work⁵.

The historian, as reported by T. Kamusella, agree that before the first partition of 1772 the ‘Poles’ constituted about 5 million (40%) of the Commonwealth’s population meanwhile the rest of it was composed of ‘Lithuanians’ amounting to 0.7 million (5%), of ‘Ruthenians’ (‘Ukrainians’ and ‘Belarusians’) amounting to 5.7 million (45%), of Jews amounting to 1 million (8%) meanwhile the rest made up of ‘Germans,’ Armenians and Tatars. On the other hand T. Kamusella⁶ underlined that it is not proper to apply the categories of national minorities with the aim to analyse the social composition of Polish-Lithuanian Commonwealth because it was an «estate driven organization» where a more relevant role in shaping the society was still played by the census and by the religion.

Namely precisely census and religious rights were recognized by the Government Act of May 3th, 1791⁷ which was adopted by the ‘Great Sejm’ shortly before the second partition of Polish-Lithuanian Commonwealth⁸.

Assuming the dominant role of the Catholic religion the so called first Constitution of Poland in art. 1 thus firstly stated that: «The Holy Roman-Catholic Faith, with all its privileges and immunities, shall be the dominant national religion. The changing of it for any other persuasion is forbidden under the penalties of apostasy: but as the same holy religion commands us to love our neighbours, we therefore owe to all people of whatever persuasion, peace in matters of faith, and the protection of government; consequently we assure, to all persuasions and religions, freedom and liberty, according to the laws of the country, and in all dominions of the Republic».

Furthermore the Government Act of May 3th, 1791 though maintaining the class (estates) based structure of the society alongside the rights and prerogatives of the gentry in private and public life, introduced some prerogatives of bourgeois living in Royal towns. Nevertheless in

⁵ J. Jakstas, *How Firm was the Polish-Lithuanian Federation?*, in *Slavic Review*, Vol. 22, No. 3 (1963), 442-449. Otherwise at p. 401 the author remembers that: «There is abundant literature in historical writings treating the disintegration and downfall of the Polish-Lithuanian republic (*Rzeczpospolita*)...»

⁶ T. Kamusella, *The Un-Polish Poland, 1989 and the Illusion of Regained Historical Continuity*. Palgrave Macmillan, Cham., 2017, 18.

⁷ The Government Act of May 3th, 1791 in https://www.constituteproject.org/constitution/Poland_1791.pdf?lang=

⁸ O. Wagner, *Staat und religiöse Minderheiten in Polen*, in *Jahrbücher für Geschichte Osteuropas*, Vol. 10, no. 2 (1962) 201.

conformity of the Government Act only the gentry could still exercise full political civil and political rights. Therefore stating that «All power in civil society should be derived from the will of the people...» (art. V) the Government Act substantially still referred only to ethnic polish gentry (*szlachta*) or to lithuanian polonized gentry.

The Government Act of 1791 had however been applied only for a brief period (nineteen months) as far as respectively in 1792 and in 1975 the Polish-Lithuanian Commonwealth underwent other two different partitions which led to its total disappearance from the map of Europe.

More specifically all the territories of the previous Polish-Lithuanian Commonwealth were divided among Prussia (since 1871 German Empire), the Austrian Hungarian Empire and the Russian Empire which introduced different institution for governing the incorporated territories.

At the same time during the different foreign administration in the lands of the former Polish-Lithuanian Commonwealth constantly grew the national consciuosness not only of the “ethnic poles” but also of ethnic ukrainian and ethnic belorussian who never were considered member of the *szlachta* before the partition.

Thus during the reunification of a relevant part of territories of the former Polish-Lithuanian which took place in WWI under the leading role of General Pilsudki the main question which arose, as in the other parts of Central Eastern Europe, concerned the national question.

In addition to this the polish leaders didn't share the same point of view. General Pilsudki - following the Jagellonian tradition and the model of the Polish-Lithuanian Commonwealth - promoted the creation of a civic notion of nation and the creation of a Federation of Poland with Ukraine and Belarus' aimed to break the former Tsarist Empire into its constituent parts, to push Russia further to the east and separate it with the chain of countries connected to Poland with federal ties or close alliances⁹.

Otherwise Roman Dmowski and Stanislaw Grabski, following the Piast' tradition, advocated an assimilationist approach and sought, in contrast Pilsudski, to limit Russia to an extent that would ensure the preservation of the one and undivided Russia as an ally against Germany.

Therefore Poland on one part was reunited in the spirit of the thirteen of the President Wilson's fourteen points which declares that: «An independent Poland should be erected which should include the territories inhabited by indisputably Polish population, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant».

On the other one its reunification in contrast with the 'Wilson doctrine' clearly demonstrated that it was impossible to create a new State by making it perfectly coinciding with the respective nation. As a

⁹ T. Kamusella, *Poland's Minorities in the Transition of Soviet-Dominated Ethnic-Nation State to Democratic Civic Nation-State*, in [Kamusella: Polish Minorities \(yorku.ca\)](http://www.yorku.ca/kamusella), 1.

consequence, during the Conference of Versailles the Principal Allies subordinated the international recognition of independent Poland to the acknowledgement of national minority rights within its boundaries.

This approach - which also to some extent balanced the different views of Pilduski and Dmowskj - underpinned the drafting of the following two Treaties: *a)* the Treaty of Peace, signed by the Principal Allies and the Associated powers with Germany on June 28, 1919 that at art. 87 recognized “the complete independence of Poland” and *b)* the so called little Treaty of Versailles signed by the Principal Allies and the Associated powers with Poland on June 28, 1919¹⁰.

The Little Treaty of Versailles¹¹ indeed, after having established the provision for the acquisition of the Polish nationality (citizenship), proclaimed the principle of non discrimination of the Polish nationals based on race, language and religion specifying that «Differences of religion, creed or confession shall not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries» and that «No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings» (art. 7).

The little Treaty of Versailles also recognized cultural rights. Namely, after establishing the rule of equal treatment of all Polish nationals belonging to national minorities (art. 8) it underlined that «Poland would provide in the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Polish nationals through the medium of their own language»¹². Furthermore the little Treaty foresaw that: «In towns and districts where there was a considerable proportion of Polish nationals belonging to racial, religious or linguistic minorities, these minorities should be assured an equitable share in the enjoyment and application of the sums which might be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes» (art. 9).

Thirdly the little Treaty of Versailles did not embodied a list of minorities but in articles 9 and 10 respectively only mentioned the “Jewish communities” and the “Jews”.

¹⁰ The text of the Treaty in

<https://history.state.gov/historicaldocuments/frus1919Parisv13/ch29>

¹¹ P. Korzec, *Polen und der Minderheitenschutzvertrag (1919—1934)*, in *Jahrbücher für Geschichte Osteuropas* Vol. 22, no. 4 (1974) 515-555.

¹² Nevertheless the teaching in national minorities languages at that time should “not prevent the Polish Government from making the teaching of the Polish language obligatory in the said schools”.

To sum up the Treaty reflected the new approach in the field of minority rights protection but many stipulation of the same underlined that persons belonging to racial, religious and linguistic minorities could benefit of the above mentioned cultural minority rights only if they enjoyed the Polish nationality. Furthermore the Polish nationals belonging to racial, religious and linguistic minorities could exercise the above mentioned minority rights only individually or in common with other Polish nationals belonging to racial, religious and linguistic minorities since the same treaty did not establish collective rights.

The above stated rules were placed under the guarantee of the League of Nations¹³ and any members of its Council had the right to bring any infraction or any danger of infraction of these obligations to the attention of the same Council which thereupon could take such action and give such direction as it might deem proper and effective in the circumstances.

Furthermore any difference of opinion as to questions of law or fact arising out of these Articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, had to be held as a dispute of an international character under Article 14 of the Covenant of the League of Nations and should, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

Finally the little Treaty of Versailles affirmed its priority with respect to the legal order of reunified Poland since it stated that the stipulations foreseen in Articles 2 to 8 should be recognized as fundamental laws and no law, regulation or official action shall conflict or interfere with the same stipulations, nor shall any law, regulation or official action prevail over them

In comparative perspective the Little Treaty of Versailles became the blueprint for other *ad hoc* Minority Rights Treaties¹⁴ which were signed between the Principal Allies and their Associated Powers respectively with Romania (at Paris on December 9, 1919), with the Kingdom of the Serbs, Croats, and Slovenes (at St. Germain on September 10, 1919), with Czechoslovakia (at St. Germain on September 10, 1919) and with Greece (at Sevres on August 10, 1920).

Similar obligation were also incorporated in *ad hoc* chapters of the Treaties of Peace signed by the Allied and the Associated Powers with Austria (St. Germain-en-Laye on September 10, 1919 - Part III, Section V, Articles 62 to 69), with Bulgaria (Neuilly-sur-Seine on November 27, 1919

¹³ C. Fink, *The League of Nations and the Minorities Question*, in *World Affairs* Vol. 157 no. 4 (1995) 197-206.

¹⁴ L. Riga, and J. Kennedy. *Tolerant Majorities, Loyal Minorities and 'Ethnic Reversals': Constructing Minority Rights at Versailles 1919*, in *Nations and nationalism* Vol. 15 no. 3 (2009) 463.

- Part III, Section IV, Articles 49 to 57), with Hungary (Trianon on June 4, 1920 - PIII, Section VI, Articles 54 to 60) and with Turkey (Lausanne on July 24, 1923 - P1, Section IXI, Articles 37 to 45).

Also the Declarations made before the Council of the League of Nations by Albania (on October 2, 1921), Estonia (on September 17, 1923), Finland (with - respect to the Aaland Islands on June 27, 1921), Latvia (on July 7, 1923) Lithuania (on May 12, 1922) and Irak contained analogous rules even if they did not always foresaw that their infraction could be refer to the League of Nations¹⁵.

To sum up the system of minorities protection established in Versailles did not extend its jurisdiction to all the countries which were members of the League of Nation but concerned only specific countries, mostly the new countries and the enlarged countries of Central-Eastern Europe and some defeated countries during WW1. This approach during the Conference of Versailles was partly contested. More specifically Japan - as an alternative to the country by country approach - proposed the introduction of a universal regime for minority-rights protection¹⁶. Nevertheless, in the end at Versailles prevailed the selected approach.

Besides the agreements signed during the Conference of Versailles further bilateral and trilateral agreement were concluded by the Polish Government, i.e. the Warsaw Treaty of April 21 (22) 1920 and the Treaty of Riga of March 18, 1921.

On one side these agreements sanctioned a further enlargement of the territories of Poland that was still characterized as a multinational country. Therefore following the new approach towards national minorities in the census of September 30, 1921 the citizen of Poland were also asked to indicate their mother tounge and nationality even if respect to the latter, two categories only have been calculated: "Poles" and "other nationalities" ¹⁷. After the census out of a population over about 25.650.000 residents 68.9% were poles meanwhile among the other nationalities 15,5% were Ruthenians, 8% were Jews, 4% were Belorussian, 3% Germans and others 0,3% (Russian, Armenian, Tatar)¹⁸. To sum up after WWI Poland the members of national minorities accounted one-third of the total number of its citizens¹⁹.

¹⁵ J. Jacson Preece, *Minority rights in Europe: from Westphalia to Helsinki*, in *Review of International Studies* Vol. 23 no. 1 (1997) 82; H. Rosting, *Die Modernen Minderheitenvertrage*, in *Nordisk Tidsskrift for International Ret*, Vol. 9 (1938) 14-48.

¹⁶ S. Kim & M. Kim, *The universal nomos' of the Versailles peace system and the different dreams of korea and japan: National self-determination and racial equality*, in *Korean Social Sciences Review*, Vol. 4 no. 1 (2014) 113-124.

¹⁷ E. Romer, *The Population of Poland according to the Census of 1921*, in *Geographical Review*, Vol. 13, No. 3 (1923) 402.

¹⁸ Census data of 2021, available in <https://stat.gov.pl/en/infographics-and-widgets/infographics/general-census-1921,49,1.html>.

¹⁹ R. Dyboski, *Poland and the Problem of National Minorities*, in *Journal of the British Institute of International Affairs*, Vol. 2, no. 5 (1923) 181.

On the other hand the Warsaw Treaty and the Treaty of Riga became relevant for the protection not only of persons belonging to specific minorities within the boundaries of Poland but also for the protection of Polish in neighboring States.

Nevertheless the Warsaw Treaty with Ukraine of April 1920 – even if it put an end to the Polish-Ukrainian war – merely laid down that “Ethnic Poles within the Ukrainian boundaries and ethnic Ukrainians within the Polish boundaries enjoyed the same rights in their respective State”.

Otherwise the Treaty of Riga of March 1921 with Soviet Russia and Ukraine devoted more rules related to the minority protection.

In fact the Treaty of Riga first of all stated the right of equal treatment affirming that «Russia and the Ukraine undertake that persons of Polish nationality in Russia, in the Ukraine and in White Ruthenia, shall, in conformity with the principles of the equality of peoples, enjoy full guarantees of free intellectual development, the use of their national language and the exercise of their religion. Poland undertakes to recognise the same rights in the case of persons of Russian, Ukrainian and White Ruthenian nationality in Poland» (art. 7).

Secondly the Treaty of Riga, as the little Treaty of Versailles, affirmed that «Persons of Polish nationality in Russia, in the Ukraine and in White Ruthenia shall so far as in conformity with the domestic legislation of these countries have the right to make full use of their own language, to organize and maintain their own system of education, to develop their intellectual activities and to establish associations and societies for this purpose; persons of Russian, Ukrainian and Belarusian nationality in Poland shall enjoy the same rights so far as is in conformity with the domestic legislation of Poland».

However it is to underline that both the Treaty of Warsaw and the Treaty of Riga – in comparison with the Little Treaty of Versailles – did not use the expression «national minorities» since the first one makes only reference to the «ethnic Ukrainian and the ethnic Poles» meanwhile the second one employs the word «nationalities» as in the Constitution of the Socialist Federative Soviet Republic of Russia of 1918.

Finally the Geneva Convention concerning Upper Silesia – signed by Poland and Germany on 15 May, 1922 after the holding of the corresponding plebiscite – extended the jurisdiction of the little Treaty of Versailles to the territories of Upper Silesia incorporated by Poland. The Geneva Convention, by contrast with the Treaty of Warsaw and the Treaty of Riga, employed again the term «minority» referring to the «German minorities and Polish minorities».

The terms national minorities were also introduced in the Polish Constitution of 1921.

Nevertheless the Polish Constitution of 1921 did not exactly reproduce the clauses foreseen in the little Treaty of Versailles.

First of all the Constitution of 1921, in the context of its art. 95 (protection by the State of life, liberty, and property), affirmed the principle of non-discrimination regardless of extraction, nationality, language, race, or religion²⁰.

Secondly art. 109 and art. 110 of the Constitution were devoted only to minority rights. On one hand art 109 stated that «Every citizen has the right of preserving his nationality and developing his mother-tongue and national characteristics» and, in order to guarantee the preservation of national characteristic, also ruled that «Special statutes of the State will guarantee to minorities in the Polish State the full and free development of their national characteristics, with the assistance of autonomous minority unions, endowed with the character of public law organizations, within the limits of unions of general self-government». Finally the same article foresaw that the autonomous minority unions could enjoy the financial support of the State²¹.

However art. 109 - even mentioning the right to create autonomous minority unions - does not clearly states the principle of personal cultural autonomy which at that time, on the basis of the original proposal of Karl Renner and Otto Bauer, instead was inserted in the Constitution of Estonia of 1920 (followed by the adoption of the Estonian Cultural Autonomy Law of 1925) and in the Constitution of Latvia of 1921. Also the Ukrainian Rada in its third Universal of November 1917 proclaimed that Ukraine would guarantee the right of the peoples of Ukraine, included the Polish people, to “national personal autonomy”. This statement was also followed by the adoption of an *ad hoc* Statute on «National personal autonomy» whose content was incorporated in the Constitution of the Popular Republic of Ukraine of April 1918 but the latter was never applied due to the reversal of power in favour of the red army²².

On the other hand art. 110 of the Polish Constitution, as also foreseen in the little Treaty of Versailles, acknowledged specific cultural rights of persons belonging to national minorities stating that «Polish citizens belonging to national, religious, or linguistic minorities have the same right as other citizens of founding, supervising, and administering at their own expense, charitable, religious, and social institutions, schools and other educational institutions, and of using freely therein their language, and

²⁰ Art. 95. The Republic of Poland guarantees on its territory, to all, without distinction of extraction, nationality, language, race, or religion, full protection of life, liberty, and property.

²¹ Art. 109 (3). The State will have, in regard to their activity, the right of control and of supplementing their financial means in case of need.

²² C. Filippini, *La reintroduzione dei termini di minoranze nazionali negli ordinamenti della Federazione di Russia e dell'Ucraina in prospettiva comparata*, in *Nad. Nuovi Autoritarismi e Democrazie. Diritti, Istituzioni e Società*, n.1, 2020, 8-9.

observing the rules of their religion».

The content of art. 109 and that one of art. 110 were not repealed by the amendment introduced in the Polish Constitution in 1926²³ and these provisions - even if during the Polish census of 1931 the citizens weren't more asked to indicate their nationalities - were also maintained in force, as an exception, after the adoption of the 1935 Polish Constitution.

Nevertheless the geopolitical and historical context following World War I the imposition of a system of protection of minorities only on specific countries proved to be ineffective. The same Congress of National Minorities, which was formed in order to lobby for the rights of national minorities, asked for the revision of the Versailles system of minority rights protection. Moreover also Poland began to underline that the accommodation of national minorities should not concern only certain States but all the States part of the League of Nations. Finally on September 13th, 1934 at the XV Congress of League the Polish Foreign Minister, Colonel Beck announced that from that moment forward the minorities in Poland would be protected only according to the Polish Constitution²⁴ and that he would no more cooperate with the international institutions in matters concerning minorities « jusqu'au moment où les engagements qui en [dé]coulent seront étendus à tous les pays membres de la société».

At the same time the failure of the minorities protection framework established in Versailles had been advocated by the German Reich as justification for the occupation of the territories of Central-Eastern European States where German minorities lived.

The failure of the international system provided for the protection of minorities rights in Versailles “pushed” the international community not to adopt the same approach after the WWII.

²³ G. Simoncini, *The Polyethnic State: National Minorities in Interbellum Poland*, in *Nationalities Papers*, vol. 22 no. 1 (1994) 5-2.

