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## **Between History and Europe Europeanization of Post-1989 National Minority Policy in Poland**

*Abstract:* This article discusses the development of state policy concerning national minorities in Poland after 1989 from the perspective of its internationalization and the Europeanization of its legal foundations, i.e., guaranteed legal status for minorities and the nature and scope of minority rights. The thrust of the article is that Europeanization of Poland's national minority policy progressed in several stages and that the process of EU accession was not the only impulse for this progression. Initially, Europeanization focused on regulation of the status of minorities by means of bilateral treaties with Poland's neighbours which included special "minority clauses." The next stage was connected with the EU accession process. In this stage, protection of minorities was one of the most important political criteria against which candidate progress was evaluated (the so-called Copenhagen criteria) and it ended with the acceptance of international documents (mainly European Council documents) concerning the protection of minorities. The last stage concluded with the passing and implementation of a special minority act in 2005. Paradoxically, external factors (the influence of international institutions) had the greatest impact on the Europeanization process in the early 1990s. Later developments were apparently more influenced by internal factors, especially the need to regulate the legal status of such minorities as the Silesians and the Kashubians.

*Keywords:* national minorities; national minority protection; Poland; Europeanization; European Union.

### **Introduction**

A major evolution of concerns and research concepts has taken place in the scientific literature on national minorities and state policy in Central-Eastern European countries within the last twenty years. The majority of the literature at the turn of the 1980s and 1990s focused on descriptions of the "return" of nationalisms and the related problems of how to solve ethnic conflict (Cuthbertson & Leibowitz 1993; Gurr 1993). During the next decade, researchers focused on analysis of state policy concerning ethnic minorities vis-à-vis the democratization of political systems and the development of civil society viewed as the condition for successful integration (Burgess 1999). For the last five years, researchers have mainly been interested in Europeanization of the protection of these groups in relation to the countries' participation in international institutions and particularly with the processes of EU accession and membership. The question now was: how powerful the different organizations were, how were member states to adopt and implement minority protection principles and also why different countries differed with respect to the number of protected groups and guaranteed rights (Rechel 2008: 3).

The reason given for investigation of these phenomena is that European institutions are active “actors” on EU candidate countries’ national political arenas who are responsible for making, changing or even enforcing specific legal and political decisions regarding ethnic relations. Change of minority policies in these countries, it has been pointed out, was more difficult than economic or legal reform because it had a more serious bearing on the country’s cultural identity and the dominant national narrative (Kelly 2004: 4).

Will Kymlicka also elaborates on the shift of interests from “national” to “international” activities in the area of ethnic relations in his latest book. He discusses the internationalization of the principles of multicultural policy (which he understands broadly—from national federations through the defence of “old” minorities to immigrant integration), the recent successes in this field, as well as the barriers to its global dissemination. He writes that the existing scientific research has mainly concentrated on ethnic differences and policies toward the minorities in particular countries (i.e., ethnic nationalism) whilst ignoring the role of international institutions which formulate the norms of conduct in this field (Kymlicka 2007: 9–10). Meanwhile, it is the latter which are their main “creators” whereas member states are primarily “recipients.” Analysis of this relationship is essential if we are to understand the “paradox of the new international diversity policy” (Kymlicka 2007: 16).

This article looks at the problems of development of state policy with respect to national and ethnic minorities in Poland in the last twenty years from the perspective of its internationalization and the Europeanization of its legal foundations, i.e., guaranteed minority legal status, the nature and scope of granted rights, and the main organizing regulations in this field. Although Poland continues to be a very ethnically homogeneous country, it may still be an interesting example of this phenomenon.

There are many definitions of Europeanization and the phenomenon can be approached from many different perspectives. Most of them are a combined effort to describe changes in national policies and style of implementation of these policies in different countries implied by EU membership. EU membership is still synonymous with European integration and emphasis is put on the importance of convergence of institutional solutions in various areas of socio-economic life and harmonization of the law. Some authors take a broader approach, going beyond the institutional framework of the EU and defining it as a form of modernization of culture and social consciousness related to the export of values and norms represented by European institutions and countries (Weinar 2006: 44–47).

Europeanization is also understood as the analysis of the processes of EU influence on member states and reactions to this influence (Kamińska 2008: 24). Hence, one of the most heatedly debated issues today is concerned with how we are to understand the mechanisms of influence, i.e., the methods of achieving Europeanization. As far as these issues are concerned, researchers refer on the one hand to the concept of “rational choice” which views the state and its authorities as a rational actor who is striving to get the best possible results on both the international and the national arena. On the other hand, they adopt the “constructivist” concept which emphasizes the importance of persuasion and discursive methods in the adoption of specific values

and norms of conduct (particularly by the governing elite) in specific spheres of social life (Rechel 2008: 3–4). This way they are making references to the sociology of international affairs which transcends “international comparative research” and tries to analyze international relations between various state agencies and society, paying special attention to their internationally presented identities and interests (Paleczny 2001: 8–39; McSweeney 1999).

In the present article, “Europeanization of minority policy” will be understood as the process of adoption of international (European) solutions regarding protection of national minorities at the level of legal regulations and their implementation. Most Polish writers who take up these issues have focused on the description of documents themselves rather than the practicalities of document implementation, the evolution of their adoption or the accompanying political discussions (Leszczenko 2009: 289–301; Malicka 2004; Pawlak 2001: 134–151). In one of the latest publications dealing with Polish policy with respect to minorities attention is drawn to the poor of impact of the EU accession process and lack of interest of international organizations in these problems in our country (due to the smallness of these minorities and the practical absence of the risk of outburst of ethnic conflict). Attention has been paid, on the other hand, to the excessive politicization of national minority (mainly German minority) issues despite the smallness of these minorities and to the significant delay in passing the special minority act which did not take place until January 2005, when Poland was already a member of the European Union (Vermeersch 2008: 168, 174).

The thrust of this article is that, in Poland, Europeanization of national minority policy has proceeded in several stages and has been related not only to the process of EU accession. At first, it focused on regulating the status of minorities by signing bilateral treaties with Poland’s neighbours containing special “minority clauses.” This was extremely important from the point of view of the ongoing geopolitical changes in this part of Europe and our relations with Germany, then in the process of uniting, and recognition of the German minority and striving for official recognition of Polish minorities in neighbouring countries were of utmost significance. The second stage had to do with the process of EU accession where protection of minorities was one of the most important political criteria in evaluation of a candidate state’s progress (the so-called Copenhagen criteria) and with ratification of international documents relating to protection of minorities (especially documents issued by the European Council). The last stage concluded with the passing of a special minority act in 2005 and its implementation (which is still in progress).

Paradoxically, in the process of Europeanization of our policy regarding minorities, external factors (the influence of international institutions) had the greatest impact in the first half of the nineteen-nineties. Later, internal factors seemed to be more important, particularly the need to regulate the legal status of such minorities as the Silesians and the Kashubians.

The article is organized as follows. I shall begin with some comments on changes in Polish policy regarding minorities in Europe within the last two decades. Next, I shall pay attention to the role of our past heritage relating to the ethnic structure and post-war policy regarding minorities in Poland. I shall then discuss the consecutive

stages of evolution of state policy regarding these communities and I shall conclude with some reflections on the similarities and differences in Europeanization in Poland compared with other countries in our region.

### **The European Model of Protection of National Minorities**

The presence of national minorities is always a source of challenge relating to their members' place and rights in the majority society (Peerce 2007: 15–33). The entire spectre of approaches to this issue can be found in the latest history of Europe—from such extremes as extermination of minorities through the ignoring of their ethnic identity to regulation and programs fostering their recognition or special protection. The latter approaches share several features such as assimilation of minorities, striving for complete equal rights and supporting minority institutions (Eriksen 1993: 122–124). This approach has been reflected in changing legislation and European state policies within the last 20 years.

The post-war (post-1945) international (and European) system of protection of minorities was based on prohibition of discrimination (including ethnic and racial discrimination) and the principle of equal legal rights for every citizen. This has been reflected in the main human rights documents, none of which in fact made any reference to national minorities (Malloy 2005: 24–50). The geopolitical changes and the wave of democratization at the turn of the 1980s and 1990s made it necessary to adopt new and more explicit standards of protection of members of minority communities.

A major shift in the philosophy of minority rights took place in Europe in the 1990s. (Janusz & Bajda 2001). New documents concerning the protection of minority rights issued by the United Nations Organization,<sup>1</sup> Council of Europe,<sup>2</sup> OSCE,<sup>3</sup> European Union (European Communities) as well as other international organizations and groups tried to respond positively to the revival of ethnic consciousness in Europe.

In a nutshell, the change in approach to minorities can be summarised in the following principles. First, the concept of non-discrimination has been substituted by state actions which help members of minorities not only to retain but also to develop their unique ethnic identities (so-called positive discrimination).

Second, ethnic diversity is accepted. It is viewed as positive and politically “safe.” Protection of minorities is viewed as a culture-enriching factor leading to social peace and serving as a test of the democratic nature of a country's government (Kymlicka 2007: 118–121). It has eventually come to be viewed as the axiom of “Euro-Atlantic liberal democracy” which says that progress in democratization is measured in terms

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<sup>1</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, (UN General Assembly, 18 December 1992).

<sup>2</sup> European Charter for Regional or Minority Languages (5 November 1992) and the Framework Convention for the Protection of National Minorities (9 November 1995).

<sup>3</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990).

of the degree to which minority rights are respected and the consequences of former minority discrimination have been overcome (Wnuk-Lipiński 2004: 11).

Third, a broad definition of the concept of “minorities” is adopted. On the one hand European documents speak of their protection but on the other hand they do not give one, universally shared definition of the concept. They refer to a diverse “palette” of national and ethnic societies in particular countries where it is the governments themselves which decide which groups are to be protected. The protection system has been additionally limited largely to traditional, vernacular communities (i.e., ones of non-immigrant origins) whose members are citizens of the country in question.

Fourth, the protection system is based on individual rights which means that group laws or, in extreme cases, autonomy, are out of the question. The following principle is adopted: by protecting the rights of individuals as members of minorities one is also protecting the individual’s affiliation group (Mik 1996: 33).

Fifth, the adopted minority regulations mainly guarantee cultural (education, culture etc.) rights but are less protective with respect to political or linguistic rights. Implementation of the rights is largely the responsibility of the state authorities because it is mainly the state and its institutions that protect minorities.

Sixth, it is now accepted that minority protection is not the sole domain of one country. It is submitted to international cooperation and certain forms of international control (mainly in the form of progress reports on the state of protection). All this, however, is to take place with due respect for the state’s sovereignty, its territorial integrity and the principles of good neighbourhood.

From the perspective of European integration and European Union expansion, the requirement concerning national minorities as a criterion of accession of new candidate states was brought up at the meeting of the European Council in Copenhagen in June 1993. It was resolved at this meeting that countries aspiring to EU membership must meet specific criteria prior to their final integration. In addition to democracy, rule of law and human rights, the list of political expectations included respect for the rights of national minorities.

How this political criterion of protection of minorities was to be translated into practical action was the real challenge, however (Rechel 2008: 3). From the perspective of European integration, the expectations of the European Commission regarding fulfilment of the Copenhagen criteria were viewed as a condition and direction for action whereas as far as actual implementation of specific principles was concerned, reference was mainly made to OSCE and European Council (and particularly Framework Convention) documents, treated here as complementary. Initially, these institutions tried to develop their own approaches to protection of minorities but they eventually began to coordinate their activities in order to develop a more consistent system of protection of minority rights.

Serious barriers to the development of a unified system of protection existed, however, and different expectations were addressed to candidate countries. “Old” EU members did not have a homogeneous approach to their own minorities. For example, France and Greece still deny the existence of minorities on their territories. This suggests lack of agreement among all EU members with respect to minority rights

standards. From the very start of the integration process this was a challenge, both for the organization itself and for its “old” and “new” members (Pentassuglia 2001: 37–38). Another problem was the general outline nature of the accepted documents referring to protection of minorities—governments in the different countries were left with the business of filling them with precise contents and implementing them. A lot depended on their level of involvement.

### **Historical Legacy.**

#### **Ethnic Structure and Policy Regarding National Minorities in Poland 1945—1989**

The consequences of post-war changes in the ethnic structure of Polish society and policies regarding minorities have played a significant role in shaping the historical-cultural context for post-1989 Europeanization of minority-related policies. The literature underscores the negative effect of the experiences of World War II and then communism on policy and the situation of minority groups in post-communist countries.

After 1945, Poland, within her new territorial boundaries, became an almost unilingual country. The new state frontiers, Hitler’s extermination of entire groups of the population (mainly Jewish and Romani), wartime relocation and post-war migrations (especially repatriation of the Poles, displacement of the Germans, relocation of national minorities to the USSR or their dispersion throughout the country—this mainly affected the Ukrainians) all affected the structure of the population and the size of national minorities in post-war Poland (Kersten 1969). Hence, in the early 1950s (according to estimates made at the time) national minorities constituted no more than 2% of the Polish population (Kwilecki 1963: 87–88).

The Polish state authorities believed that national minorities remaining within Poland’s new boundaries ought to be marginalized and encouraged to assimilate. The idea was to have a unilingual state. This idea, spurred by the tragic experiences of the recent war, was shared by the leading political camps of the day—both the London one and the communist one (Przybysz 2001; Wrona 2001) and enjoyed enormous public support (Kersten 1989: 462).

The unilingual state was to be achieved by means of compulsory displacement of the German and Ukrainian populations and curtailing the activity of the remaining minorities. Vernacular (so-called autochthonous) minorities including the Silesians, Kashubians, Mazurians and Warmians, were verified and repolonized. It was believed that their “Slavonic” origins provided a sound foundation for the development of Polish national consciousness. Other ethnic minorities were to be concealed or reduced to regional-historical variants of the Polish nation (Obracht-Prondzyński 2002).

National homogeneity was thought to be one of the major achievements of new statehood and was juxtaposed with the problems of the inter-war period. New legal regulations and administrative policies were introduced to support the new state policy (Olejnik 2003; Mironowicz 2000). Although ethnic origins were treated as every citizen’s private affair (the principle of non-discrimination), reality took the opposite

course. Officially recognized minority organizations were supervisory instruments rather than partners in the development of national policy. Any transgression of the fixed framework was treated as a sign of national “separatism.” They provided no outlet for wider public declaration of their ethnic distinctiveness but they did contribute to the support of such distinctiveness in private life.

Policy regarding minorities was poorly institutionalized. The term “national minority” was completely absent in the constitution and the legal system. It was substituted by the more general and ambiguous term “nationality.” This was a major change compared with the inter-war legal regulations which regulated this issue comprehensively and in great detail (Tomaszewski 1997). The state’s attitude toward minorities expressed the limited right to maintain identity (mainly via folklore) on the one hand and exclusion from the public sphere qua minority (with regard to ethnicity) and emphasis on assimilation as a mode of social integration on the other hand.

State policy regarding national minorities between 1945 and 1989 was not unified and differed for different groups. Political aspects of the minority issue surfaced time and again in the post-war period, particularly at times of political crisis when changes of government made various needs more salient and stimulated the activity of minorities in 1956, 1968 and 1980–1982 (Madajczyk 1998).

The ongoing socio-economic transformations in Poland, especially such processes as industrialization, migration from the villages to the towns and the expansion of mass culture in the Polish language (mainly on the radio and television), as well as the national (Polonizing) role of the Catholic church, all supported state policy. For the majority of society, representatives of the minorities were already just a reminiscence of Poland’s multinational history in the 1970s—a “folkloristic relic” rather than citizens of the same state representing a different nationality.

The problem of state policy with respect to minorities and the scope of guaranteed rights was not subject to public debate. Attitudes toward minorities were viewed through the prism of their extraordinariness rather than their historical roots and traditional cohabitation, and the problem of minorities was repressed from social consciousness. Information about them was no longer published in the statistical annals (which, for example, stopped publishing statistics of teaching establishments teaching in minority languages) or the scientific literature.

The most important and still experienced consequence of the post-war-changes, however, is the change of size of national minorities. The Polish national censuses in 1950, 1960, 1978 and 1988 did not have items concerning nationality or native language. It was not until the 2002 national census (conducted 13 years after initiation of the democratization process) that the question of national and linguistic diversity in contemporary Polish society was reintroduced for the first time since the end of World War II. The census questionnaire contained two items on nationality: “What is your nationality?” and “What language do you usually speak at home?”

The census revealed that Poland is an ethnically homogeneous country. Of the entire population of Poland (38 230.1 thousand), 96.74% (36 983.7 thousand) declared Polish nationality and only 1.23% (471.5 thousand) declared non-Polish nationality. According to the 2002 census the most frequent non-Polish nationalities

were: Silesian (173.2 thousand), German (152.9 thousand), Belarussian (48.7 thousand), Ukrainian (31.0 thousand), Romani (12.9 thousand), Russian (6.1 thousand), Lemko (5.9 thousand), Lithuanian (5.8 thousand), Kashubian (5.1 thousand), Slovakian (2.0 thousand), Vietnamese (1.8 thousand), French (1.6 thousand), American (1.5 thousand), Greek (1.4 thousand), Italian (1.4 thousand), Jewish (1.1 thousand), Armenian (1.1 thousand), and Bulgarian (1.1 thousand).

The census also revealed that the vast majority of the population of Poland also speaks Polish at home. All in all, 97.8% (37 million 405.3 thousand) declared that they spoke Polish and 96.5% (36 million 894.4 thousand) declared that they spoke only Polish at home. The percentage of respondents declaring that they spoke a non-Polish language at home was 1.47% (563.5 thousand). The most frequent non-Polish languages were: German (204.6 thousand), English (89.9 thousand), Silesian (56.6 thousand), Kashubian (52.7 thousand), Belarussian (40.7 thousand), Ukrainian (22.7 thousand), Romani (15.8 thousand), Russian (15.3 thousand) and French (15.3 thousand).

Table 1 gives the 2002 census statistics for the number of respondents holding Polish citizenship and belonging to the 13 national and ethnic minorities officially recognized by the Polish authorities. The table also gives estimates for these groups published in the 1990s by the Central Statistical Office (GUS), minority associations and one recognized expert source, Marek Hałuszko.

The estimates vary from 0.25 million to nearly 2 million, i.e., from 0.7% to over 5% of the general population. According to GUS (1992), the leaders of national associations gave the highest estimates whereas local authorities for territories inhabited by minorities gave the lowest estimates. Note, however, that it is the latter's estimate which is nearly identical with the results of the national census.

These discrepancies led to the questioning of the results of the 2002 national census but their scale differs depending on the national group. Considering the novelty of the items in the census questionnaire and the fact that some respondents belonging to "non-Polish nationalities" may have been afraid to disclose their ethnic identification, it is possible that national minorities in Poland are larger. All the more so that the census data are very different from earlier estimates. Grzegorz Babiński wrote in his summary of the census that they may "deviate *in minus* with respect to every minority but at the same time the size of the deviation will differ for each minority" (Babiński 2004: 147).

Leaving aside the discrepancies in minority size and accepting even the highest estimates, Poland is still an ethnically homogeneous country and nearly its entire territory is homogeneously Polish. This homogeneity renders us exceptional vis-à-vis other central-Eastern European countries. It is also fundamental for our evaluation of Poland's policy regarding minorities and her post-1989 Europeanization.

### **Geopolitical Challenges and Change of Policy Regarding Minorities after 1989**

In 1989 national minorities were recognized almost automatically and, from the present perspective, surprisingly easily. Going with the tide of democratic change,

Table 1

**National Census Data and Estimated Sizes of Recognized National and Ethnic Minorities in Poland  
(in thousands)**

Recognized national or ethnic minority	Declared affiliation with a recognized national or ethnic minority according to the 2002 national census*	GUS estimates for 1992**		Marek Hołuszko's (1993) estimate***
		Local authority estimates	Minority organization activist estimates	
Belarussians	47.640	76	300–400	200–230
Czechs	0.386			2–3
Karaims	0.043			0.15–0.2
Lithuanians	5.639	19	25–30	≈ 20
Lemkos	5.850			50–60
Germans	147.094	260	250–300	300–350
Armenians	0.262			≈ 8
Romani	12.731	19	30	25
Russians	3.244			10–13
Slovakians	1.710	5	20–25	≈ 20
Tatars	0.447			≈ 2.5
Ukrainians	27.172	70	250–300	200–220
Jews	1.055	3	6–10	15
Total	253.273	450	1151–1965	857.2–1041.7
Percentage (%) of the Polish population	0.7%	1.2%	3.0%–5.1%	2.2%–2.9%

\* *Raport z wyników Narodowego Spisu Powszechnego Ludności i Mieszkań 2002* [National Census Population and Housing Report 2002], [www.stat.gov.pl](http://www.stat.gov.pl), pp. 39–41 (respondents with only Polish citizenship).

\*\* *Wyznania religijne. Stowarzyszenia narodowościowe i etniczne w Polsce* [Religious denomination. National and ethnic organizations in Poland]. GUS, Warszawa 1993, pp. 41–143.

\*\*\* Marek Hołuszko, *Mniejszości narodowe i etniczne w Polsce* [National and ethnic minorities in Poland] *Spółeczeństwo Otwarte* 1993, no. 2.

recognition of minorities raised no serious political or social reservations. All the political parties in parliament (then in its 10<sup>th</sup> term, initiated after the election of 4 June 1989), shared the opinion that it would be impossible to ignore these communities' special needs. Various justifications were offered: compensation for the experiences of communism and communist Poland's assimilation policy, the positive historical legacy of the First Republic where many nationalities lived peacefully side by side, or fears that without an appropriate policy regarding minorities ethnic conflict similar to the conflict which had just erupted in the Balkans might break out (Wójcik 2001: 258–262).

Open national policy was viewed as part of the process of reconstruction of sovereign Poland, its democratic system and its striving for integration with European structures. Attitudes toward “strangers” was one of the conditions of acceptance of

pluralism in the development of liberal democracy (Szacki 1994: 168–187). Amidst the struggle for civil rights and liberties it was also recognized that the aspirations of minority communities must be considered and appropriate legal regulations must be passed (Kurczewska 1995: 10).

One of the factors which had a major impact on the process of minority recognition was adoption from the very start of the principle of freedom of national self-identification. It was accepted that declarations concerning participation in the life of a minority must be individual and optional, i.e., that decisions concerning national affiliation were an individual matter. The civil perspective was adopted, whereby only Polish citizens were to be protected by minority rights and national self-identification was to be a matter of every citizen's individual decision. This solution complied with international regulations, particularly with the Copenhagen Document accepted in June 1990 (within the CSCE). This gave rise to problems, however, and recognition of the German minority was the most serious one of all.

The presence of a German minority in Poland took both the authorities and Polish society by surprise, especially in Opole Silesia. As late as mid-1989 it was publicly announced that there were no more or only very few Germans in Poland. The authorities denied their existence and they justified their claim by pointing out that the Germans had been displaced in the 1940s and those who had not, had later emigrated to Germany. The process of official acknowledgement of the German minority continued until 1991 (Berlińska 1999). It was reached rather quickly at the local level and later at the national level and ended with the signing of the bilateral treaty in June 1991 (to be discussed later).

National minorities were not the central focus of political life or political factions, however. They were a rather marginal concern which only came to the fore with specific political events (such as ratification of the treaty with Germany in 1991 or the debate on the minority act) and were never an element of any consistent political party programs (Wójcik 2001: 258–262, 279–280). They were more conspicuous during the early years of the democratic transformation when minorities (mainly the German minority) became very publicly active all of a sudden and work on the new political order and, above all, the new constitution was under way.

The programs of nearly all the political parties acknowledged the need to grant equal rights to minorities as Polish citizens and to allow them to retain their national identities with respect to cultural, educational and linguistic rights. The appropriate regulations were thought to be conflict-free but there was less political agreement on minority rights which transcend the cultural and educational spheres. Debatable topics included whether or not to allow minorities to use their own language as an auxiliary official language (with Polish as the official language), electoral preferences in the parliamentary electoral law for minority electoral committees or the reciprocity principle in bilateral relations between Poland and her neighbours. Discussions usually accompanied the first readings of the minority bill or amendment of the electoral law. Let us add that, despite frequent changes on the Polish political arena, protection of minority rights was always a governmental priority and was not a topic of current dispute.

Poland's commitment to the protection of national minorities found its first legal guarantee in the bilateral treaties which our country signed with all its neighbours and other Central-Eastern European countries after 1989, and especially in 1990–1994.<sup>4</sup> First was the Polish-German Treaty on Good Neighbourliness, Friendship and Cooperation signed on 17 June 1991. Signature was preceded by agreements concerning inviolability of Poland's western border (the "2+4" Treaty signed on 12 September 1991 and the bilateral treaty between Poland and Germany confirming the existing border, signed on 14 November 1990). The border treaties laid the groundwork for treaty negotiations between Poland and Germany by eliminating potential sources of conflict.

The Polish-German treaty and later treaties regarding protection of minority rights referred to the Copenhagen Document of June 1990, the most important political document of its kind in Europe at the time. Reference to this international standard was something new. Instead of seeking special solutions for the protection of minorities and gaining as many concessions for herself as possible, Poland referred to unquestionable international regulations. These regulations were accepted in the treaties and sometimes even copied word for word. At the same time, however, the principles of protection did not exceed the standard. Making treaties the foundation for international regulations was very important for the Polish government because policy regarding minorities was no longer the problem of one or two interested states, it was "woven into" the tapestry of international cooperation in Europe (Barcz 1992).

In the parts concerning protection of minorities, the treaties are based on the assumption that minority affiliation is a matter of individual choice. Sometimes, however, attempts were made to define the concept of protected groups more precisely. This was the case with the Polish-German and Polish-Lithuanian treaties. In the former, definition of minorities was a source of controversy due to lack of equivalence because whereas in Poland Germans were a recognized national minority, Poles did not have minority status in Germany (a bone of contention to this day). As far as other treaties with countries whose relations with Poland were not potentially tense are concerned, the treaties limited themselves to stating the fact that minorities exist without any attempt to define them more thoroughly.

In addition to specific guarantees of the rights of persons belonging to minorities and relevant state activities, the treaties contain clauses concerning minorities' obligation to loyalty to the country of residence and regulations to the effect that exercise of their due rights shall comply with international law (the so-called security clauses). The treaties also confirm the inviolability of borders, territorial integrity and sovereignty of the parties to the treaties. These regulations gave the Polish authori-

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<sup>4</sup> These were, in chronological order, treaties between Poland and: The Federal Republic of Germany (17 June 1991), Republic of Hungary (6 October 1991), Czech and Slovakian Federal Republic (6 October 1991; the Czech Republic and Slovakia took over the responsibilities resulting from this treaty upon the demise of the Federation), Ukraine (18 October 1992), Russian Federation (22 May 1992), Republic of Belarus (23 June 1992), Republic of Latvia (1 July 1992), Republic of Estonia (2 July 1992), Republic of Romania (25 January 1992), Republic of Bulgaria (25 February 1993) and, finally, Republic of Moldova/Moldavia (15 November 1994), Republic of Uzbekistan (11 January 1995) and Greece (12 June 1996).

ties a sense of security, especially in the early phase of normalization of neighbourly relations, and rendered the minority problem less political and more conflict-free.

Regulation of minority protection by international and bilateral treaties played an important role in Poland in the early 1990s, mainly due to the ongoing geopolitical changes in Central-Eastern Europe. Minority protection in the bilateral treaties which Poland signed in the 1990s was approached from a broad, European perspective. This can be viewed as the first step toward Europeanization of minority policy. On the one hand, the treaties confirmed the state inviolability and territorial status quo and on the other hand they placed minority issues within the framework of bilateral political relations according to the principle of “cooperative reciprocity” (Bartoszewski 2000: 6).

### **The Quest for Legal Regulation of National Minority Status (International Conventions and National Law)**

The next step in the Europeanization of minority policy went beyond the framework of bilateral treaties. The treaty regulations contained two potential risks from the minorities' point of view. First, they did not cover groups that did not have their own nation states, such as the Romani or the Lemkos. Second, worsening relations between Poland and any of the signatories could lead to limitation of minority rights (the reciprocity principle).

Once national minorities were politically recognized it became urgently necessary to regulate the protection of their rights. Work on this issue was a two-track endeavour: international activity (documents concerning protection of human rights) and changes in national law (the Constitution).

In addition to international obligations resulting from bilateral agreements, Poland also took on a number of obligations resulting from ratification of multilateral conventions concerning human rights protection and minority protection within the United Nations Organization<sup>5</sup> and the Council of Europe.<sup>6</sup> Poland is also active in the OSCE whose standards for national and ethnic minority protection she used to prepare her system of bilateral treaties. From the perspective of definition of the legal status of minorities, however, the most important issue was preparation of the constitutional formulation and the protection act.

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<sup>5</sup> For example, the International Covenant on Civil and Political Rights (ratified by Poland on 3 March 1977) and the Facultative Protocol (ratified on 14 October 1991), the UNESCO Convention against Discrimination in Education (ratified 15 September 1964), the International Convention on the Elimination of all forms of Racial Discrimination (ratified 9 October 1968 although Poland did not recognize the competencies of the Committee on the Elimination of Racial Discrimination until 1998), and the Convention on the Rights of the Child (ratified 7 June 1991).

<sup>6</sup> In the Council of Europe Poland is party to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ratified 19 January 1993) which enables individuals to submit individual international complaints to the European Court of Human Rights. Poland signed and ratified the Council of Europe Framework Convention for the Protection of National Minorities (ratified 20 December 2000) and the European Charter for Regional or Minority Languages (ratified 12 February 2009).

The constitution of 2 April 1997 definitively sanctioned the principles of national and ethnic minority protection and the state's obligations in this area. It contains an article explicitly dealing with this issue (art. 35) and a number of other relevant articles. The preamble uses the phrase "we, the Polish nation—all citizens of the Republic." This formulation indicates that the constitution applies to all citizens whatever their nationality or ethnicity. It therefore rejects the ethnic vision in favour of the civic vision of the nation as sovereign, affiliation to which is regulated by the possession of Polish citizenship.

Article 35 of the Constitution which is devoted to protection of minority and ethnic rights proclaims that:

1. "The Republic of Poland guarantees Polish citizens belonging to national or ethnic minorities freedom to maintain and develop their own language, to maintain their customs and traditions, and to develop their own culture. 2. National and ethnic minorities have the right to establish their own educational and cultural institutions and institutions serving the protection of religious identity and to participate in the resolution of issues referring to their cultural identity."

Minority protection as guaranteed by this article is not limited to the principle of equality and non-discrimination of citizens. It contains positive state obligations to guarantee that members of minority groups can exercise their right to cultural development (language, traditions, customs) and grants them the right to establish organizations, and also to participate in decisions whose purpose is to maintain their cultural and religious identity. Hence constitutional minority protection focuses mainly on the cultural sphere. It supports an individualized approach to minority protection by using the formulation "Polish citizens belonging to national or ethnic minorities" and by so doing it lays the foundations for civil loyalty.

The Constitution also has another article (art. 27) dealing with linguistic issues which likewise applies to minority protection. This article says that "The official language in the Republic of Poland is the Polish language. This article does not violate the rights of national minorities ensuing from ratified international agreements." Both articles (35 and 27) are new additions compared with the post-war constitutional regulation of these issues. They satisfy the needs of national minorities in this domain and are rooted in Polish constitutional tradition. They resemble the regulations concerning minorities which can be found in constitutions accepted in other Central-Eastern European countries in the 1990s (Janicki 1995: 55).

Acceptance of minorities in the constitution had more than just symbolic meaning. More than anything else it had practical implications for individual members of minorities. It gave them the opportunity for emancipation and empowerment and enabled them to begin to do something to develop their ethnic cultures. Minorities could also be sure of protection of their rights and state financial support.

A number of legal solutions concerning the rights of individuals belonging to national and ethnic minorities were adopted in the 1990s. These applied to culture, education, religious denomination, language and participation in public life. The solutions comply with European standards, particularly the Council of Europe Framework Convention for the protection of National Minorities (1995). Minority communities and their organizations were now accepted as distinct subjects of public life and their

members were granted the right to unrestricted and public expression of their ethnic affiliation.

Implementation of these laws was a sign of institutionalization of the special status of these groups in Polish society. Not only did it mean stable recognition of “differences” in democracy, it also meant the granting of rights which would allow minorities to maintain their distinctness and equalize their status vis-à-vis the majority. Despite this positive change, realization of state policy with respect to various minority groups naturally still evokes various and often critical opinions, both in minority associations and in representatives of international organizations (Mikulska 2002). It has also triggered many local controversies and conflicts, many of which are related to the commemoration of people or events associated with World War II that are important for national minorities (Nijakowski 2006; Wróblewski 2006).

The European Commission noticed the changes in minority policy in the 1990s. It expressed no concerns regarding minority protection and its realization in Poland, just as it saw no reason for concern in other candidate countries such as Cyprus or Malta. Countries with a very numerous Romani population and related ethnic tension, such as the Czech Republic, Hungary, Slovakia and Romania, received lower ratings.

### **Institutionalization of National Minority Rights (The Special Minority Act, The Romani Program and the Equal Treatment Act)**

Despite the generally positive ratings of Poland’s protection of national minorities issued by international organizations there have also been critical comments. There have been two basic objects of criticism. The first one is the lack of a special parliamentary national minority act combining all the scattered minority rights in one legal act and elaborating the regulations concerning bilingualism. The second one is the need to develop a special assistance program for the Romani community (*Opinion concerning the Polish Advisory Committee...* 2006: 260–261).

Although the constitutional protection of minorities and the legal guarantees of their rights with respect to education, radio and television, electoral law etc. raised no major political or social controversies, the special minority protection bill did (Łodziński 2005: 145–156). Parliament finally passed the bill in January 2005 after over a dozen years of work.

The act regulates issues relating to maintenance and development of national and ethnic minorities’ cultural identity, regional language, mode of realization of the principle of equal treatment of individuals irrespective of their ethnic background, as well as the relevant responsibilities and competencies of organs of the government and local self-government. Among the many important and specific issues the act defines the concept of national and ethnic minority and lists the groups which the state has officially recognized as such. It also provides detailed regulations concerning bilingualism in the minority and regional languages and the methods of realization of educational and cultural rights. It lays out the administration’s responsibilities and says how it is to conduct political consultations with minority communi-

ties. The act changed the organizational foundations of minority policy, established new institutions and created the foundations for the realization of new minority rights. It was an intentional institutional reform of state policy regarding minorities (Janusz 2007).

According to the act, not all national and ethnic minorities living in Poland were to have state protection. The act only referred to individuals who were Polish citizens and belonged to minorities traditionally inhabiting the Republic of Poland—national (Belarussian, Czech, Lithuanian, German, Armenian, Russian, Slovakian, Ukrainian and Jewish), ethnic (Karaim, Lemko, Romani and Tatar) and communities who speak regional languages (Kashubian). Not all national and ethnic minorities living in Poland were recognized. In other words, the act both includes certain groups, guaranteeing protection of their rights, and excludes certain communities. This has led to tension. For example, the Silesians are currently striving for either legalization of their ethnic minority status within the minority act or recognition of the Silesian language as a regional language.

The solutions concerning minorities' linguistic rights merit special attention. These solutions say that minority languages can be spoken freely in private and in public and can also be used as auxiliary languages in relations with the official organs of districts in which not less than 20% of the population belong to the minority, traditional locality names, physiographic objects, minority street names alongside official Polish names. These regulations also apply to the Kashubian language which is a recognized regional language according to the act.<sup>7</sup>

On the one hand, the act confirmed already existing rights of members of national minorities and on the other hand it granted new, important rights, especially regarding language and the principles of cooperation with the state administration. Another major change was introduction of the concept of "regional language" and recognition of the Kashubian language as such. The purpose of this amendment was to resolve the legal status of the Kashubian community and provide the foundation for ratification of the European Charter for Regional or Minority Languages.

The act was a compromise between the need to introduce European standards of protection (resulting from systemic democratization, minority mobilization and expectations and Poland's efforts to integrate with European structures) on the one hand and the needs of the state (to maintain its sovereignty and cultural homogeneity), and especially to meet the majority's need to manifest its attachment to national values, on the other hand. Similar acts of parliament defining national minority rights had already been passed in other Central-Eastern European countries within the last dozen years or so (e.g., in Belarus, Croatia, the Czech Republic, Estonia, the Russian Federation, Lithuania, Latvia, Slovenia, Ukraine and Hungary).

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<sup>7</sup> The following minority and regional languages had been included by the end of September 2009: German in 22 districts (Opole voivodeship), Belarussian in 3 districts and Lithuanian in 1 district (Podlaskie voivodeship), and Kashubian in 2 districts (Pomeranian voivodeship). Bilingual names are permitted in 21 districts including Polish and German ones in 17 districts in the Opole voivodeship, Polish-Kashubian ones in 2 districts (Pomeranian voivodeship), Polish and Lithuanian ones in 1 district (Podlaskie voivodeship), and Polish and Lemko ones in 1 district (Małopolskie voivodeship).

Another sign of Europeanization of minority policy was the special program of assistance for the Romani community. This community's difficult situation and local governments' inability to cope with these problems led the state administration to take special action in the late 1990s. Reports on the situation of the Romani community in Poland and in other Central-Eastern European countries issued by international organizations also had an effect. In February 2001 the government accepted the "Governmental Pilot Program for the Romani Community in the Małopolska voivodeship 2001–2003." The basic goal of this program was to lead to full Romani participation in public life and to reduce the differences between this group and the rest of society in such areas as: education, employment, health, hygiene, housing, and the ability to function in civil society.

The program was successful and in August 2003 a resolution was passed to extend it to the Romani community in the whole of Poland beginning in 2004. This is the first long-term, Polish governmental initiative to improve the situation of a specific minority. It is not a quick fix. Its goal is to continuously include the Romani community in public life throughout the country. Involved, in addition to the state administration, are representatives of the Romani community, nongovernmental organizations, and local self-governments.

The last and always topical European challenge for state policy regarding minority protection is the passing of a special antidiscrimination act, expected by the European Commission. There are no legal regulations in Poland explicitly prohibiting discriminative actions in such public spheres as housing, legal relations between natural persons etc. Other European countries have such legal regulations (e.g., in order to prevent immigrant discrimination). In 2007 the Ministry of Labour and Social Policy prepared a bill on equal treatment which assumed, for example, prohibition of discrimination because of race or ethnicity. According to recent information (August 2009), the Ministry is talking of backing out of this legislation and establishing a special organ for the prevention of discrimination (Siedlecka 2009).

### **Concluding Remarks**

The post-1989 change in national minority policy in Poland was seen as a significant value which ought to be one of the constructional elements of a democratic system. The change did not take place in isolation. It took place in a diverse international environment where striving for integration with European structures played a key role.

In this article I have tried to identify the stages and problems of the Europeanization of minority protection in Poland. I have analyzed the national and international dimensions of protection in relation to systemic transformation, Poland's changing international position (her striving for integration with European structures) and the changing situation of minorities themselves. Protection of minority rights became part of the democratic order and the effort to maintain the country's cultural diversity. It was incorporated in the international (European) cooperation which provided Poland

for the first time since World War II with the opportunity to develop neighbourly relations with other countries based on such shared values as democracy and human rights (Fleming 2003: 279–280).

Recognition of minorities proceeded according to a certain sequence, from political and international (bilateral treaties) to legal acknowledgement. The state's official acknowledgement of national minorities as distinct public subjects evoked little debate or political controversy. Its significance for the minorities was both symbolic and practical. The minorities treat these developments as important achievements in post-1989 democratic transformation in Poland and a chance for emancipation, empowerment and free expression of ethnic differences. The changes are not limited to the private sphere. Minorities also have guaranteed status in public life.

A similar change of national minority policy to the one which took place in Poland also took place in other Central-Eastern European countries. Their constitutions and detailed legal acts contained similar regulations concerning the protection of national minorities and their rights. Bilingualism was one of the most difficult issues to regulate (Albin & Tomaszewska 1998: 22). Participation in international organizations and European regulations of these issues had a similar impact as in Poland (Gal 2000). This also applies to programs of assistance for Romani communities, establishment of special offices and the passing of special anti-discriminatory regulations. Different countries differ in specific ethnic structure rooted in their specific histories (Rechel 2008: 6–8).

To conclude, both in Poland and in other “new” EU member states, Europeanization of national minority protection is the result of compromise between the political requirements of accession and each country's unique history and ethnic diversity.

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