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## LEGAL REGULATIONS ON NATIONAL AND ETHNIC MINORITIES IN POLAND

Democracy is increasingly often perceived through the prism of society's attitude towards minorities which function within it, and conditions enabling them to exercise their rights and freedoms. Protection of national and ethnic minorities has a long history but issues related to them are still disputed and disputes are often international. That is why protection guarantees are part of legal solutions at universal, regional, and national levels.

Also in Poland, national and ethnic minorities are protected and granted many rights related mainly to their language, education and culture. The Constitution of the Republic of Poland of 1997 provides basic guarantees for Polish citizens who are members of national and ethnic minorities. Another important Act which in greater detail regulates their rights is the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language<sup>1</sup> (hereinafter referred to as the Act). The Act and numerous regulations provide the basis for protection of national and ethnic minorities' rights. Poland is also a signatory of international agreements of which the Framework Convention for the Protection of National Minorities which is a treaty of the Council of Europe,<sup>2</sup> and the European Charter for Regional or Minority Languages<sup>3</sup> are especially important. In addition, national minorities are protected under clauses in bilateral agreements which Poland concluded with all neighbouring countries and many other states.<sup>4</sup>

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<sup>1</sup> Journal of Laws of 2005, No. 17, item 141, as amended.

<sup>2</sup> In Poland, the Framework Convention for the Protection of National Minorities came into force on 1 April 2001, Journal of Laws of 2002, No. 22, item 209. An extremely useful mechanism is the obligation to submit reports which are later reviewed by the Advisory Committee. Recently, Poland submitted its third report to the Council of Europe, on which no opinion has been issued yet. All reports and opinions are available at [http://www.coe.int/t/dghl/monitoring/minorities/-3\\_FCNMdocs/Table\\_en.asp](http://www.coe.int/t/dghl/monitoring/minorities/-3_FCNMdocs/Table_en.asp).

<sup>3</sup> In Poland, the European Charter for Regional or Minority Languages came into force on 1 June 2009, Journal of Laws of 2009, No. 137, item 1121.

<sup>4</sup> Such clauses are contained in agreements with Germany, the Czech Republic, Slovakia, Ukraine, Belarus, Russia, Lithuania, Latvia, Estonia, Bulgaria, Hungary, Romania, Moldavia, Greece, and Georgia. The groups protected and rights granted under specific treaties differ. Cf. G. Janusz (2011), *Ochrona praw mniejszości narodowych w Europie*, Lublin, pp. 529-544.

The aim of this paper is to review present legal regulations concerning the protection of national and ethnic minorities and to identify several problematic areas. The discussion will begin with presenting definitions of national and ethnic minorities. Then Polish legal regulations on minorities including the principle of equality before the law, the rights in the sphere of education, culture, and language, and privileges written into the election law will be discussed.

#### THE DEFINITION

So far, there is no accepted definition of minorities in international law, largely due to the complexity of the issue and different approaches to it.<sup>5</sup> A consequence of such a state of affairs is the wording of Article 27 of the International Covenant on Civil and Political Rights<sup>6</sup> of 1966 which is a most important convention on human rights and which gives considerable freedom to states to decide who is to be granted the status of national or ethnic minority. Art. 27 stipulates that:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.<sup>7</sup>

French authorities, for instance, while ratifying the Covenant stated that in France there are no national minorities. In consequence, the Covenant does not protect the preservation of the culture and distinctness of either the Bretons or the Alsacians living in France.

Similarly to the provisions of the Covenant, the Constitution of the Republic of Poland grants a number of rights to minorities (Article 35)<sup>8</sup> but does not define their conceptual or personal scope. What is more, Article 35 of the Constitution covers both national and ethnic minorities, while in Article 27 on the official language of Poland, only national minorities are mentioned. That is why indications provided by the case-law on the differentiation between the two terms is extremely important. In Poland there was a dispute concerning the concept of the Silesian nationality. Its peak was when a regional association filed a motion to be officially registered under the name the “Union of People of Silesian Nationality” (in Polish: Związek Ludności Narodowości Śląskiej) and was registered as such. The Voivode [head of province] of the Katowice province, who opposed the registration of the association under such a name from the very beginning, filed an appeal. The appellate court revoked

<sup>5</sup> Cf. *ibidem*, pp. 25-76.

<sup>6</sup> In Poland, the International Covenant on Civil and Political Rights came into force on 18 June 1977, Journal of Laws of 1977, No. 38, item 167/

<sup>7</sup> More on Article 27 of the Covenant in: R. Wieruszewski, *Artykuł 27. Ochrona mniejszości*, in: R. Wieruszewski (ed.) (2012), *Międzynarodowy Pakt Praw Obywatelskich (Osobistych) i Politycznych*, Warszawa, pp. 682-695.

<sup>8</sup> Rights under that article will be discussed later.

the decision of the court of the first instance and dismissed the motion of the association, arguing that: "In Poland, the tradition is that the concept of a national minority applies to groups the members of which constitute a majority in another State; in other words, a minority is an ethnic group which is supported by the majority living outside Poland."<sup>9</sup> The appellate court drew attention to the fact that a consequence of registering the Union would be granting it privileges guaranteed to national minorities. The matter was later referred to the Supreme Court which stated that national minority is a legal term undefined in the Polish law and refers to a "national group formed in the course of a historical process and socially accepted"<sup>10</sup>. Later, the association lodged its complaint against Poland with the European Tribunal of Human Rights which found no violation of the Convention by the Polish authorities.<sup>11</sup>

The case-law facilitated determination of four basic conditions of the definition of a national minority: the support of the people's majority abroad, non-Polish nationality, cultural distinctness, and social recognition as a national group.<sup>12</sup> On 6 January 2005, the Act entered into force which, like the Constitution, differentiates between ethnic and national minorities. Definitions contained in that Act are consistent with the case-law referred to above. A national minority is defined in Article 2 of the Act as a group of Polish citizens who jointly fulfil the following conditions: is numerically smaller than the rest of the population of the Republic of Poland; significantly differs from the remaining citizens in its language, culture or tradition; strives to preserve its language, culture or tradition; is aware of its own historical, national community, and is oriented towards its expression and protection; its ancestors have been living on the present territory of the Republic of Poland for at least 100 years; identifies itself with a nation organised in its own state.

An ethnic minority is defined as a group of Polish citizens who fulfil the same conditions but two are changed, i.e. an minority is aware of its own historical, ethnic (not national) community and does not identify itself with a nation organised in its own state. Moreover, in the Act, the following national minorities are listed as recognised: Belarusian, Ukrainian, German, Lithuanian, Czech, Slovakian, Russian, Armenian, and Jewish. Ethnic minorities listed are: the Karaim, the Lemko, the Tatar, and the Roma. It is important to note that the Act does not differentiate between the freedoms and rights of national and ethnic minorities, however there is a law on electoral privileges for election committees which applies to national minorities only.

<sup>9</sup> *Postanowienie Sądu Apelacyjnego w Katowicach z dnia 24 września 1997 r.*, ref.: I Acz 493/97.

<sup>10</sup> *Postanowienie Sądu Najwyższego z 18 marca 1998 r. w sprawie rejestracji stowarzyszenia "Związek Ludności Narodowości Śląskiej"*, Ref. I PKN 4/98, "LexPolonica" No. 333477.

<sup>11</sup> *Judgement of the European Court of Human Rights of 20 December 2001. Case of Gorzelik and others v. Poland, Application no. 44158/98*

<sup>12</sup> A. Kirpsza, *Status mniejszości narodowych i etnicznych w prawie europejskim i polskim*, in: M. Galon, A. Gorgosz, J. Kihl, T. Pawłuszko, J. Piecha (eds) (2008), *Mniejszości narodowe i etniczne – materiały konferencyjne, Kraków 12 maja 2008 r.*, Kraków, p. 15.

Hence, by defining the notions of national and ethnic minorities, the Act has filled a legal vacuum but at the same time it has given rise to new questions and issues.<sup>13</sup> For instance, the condition of identification with a nation organised in its own state may raise some doubts because not every member of a national minority in Poland identifies him or herself with another country and that concerns some Armenians and Jews in particular.<sup>14</sup> Actually during the legislative procedure, some minorities protested against the “division” into national and *ethnic* minorities. After the Lower Chamber approved of the Act in 2004 and referred it to the Upper House of the Polish Parliament, the Union of Jewish Religious Communities in Poland, the Association of Tatars of the Republic of Poland, and The Roma People Association in Poland sent a letter to senators protesting against such a division which they considered “deeply humiliating”.<sup>15</sup>

The condition that minority “ancestors have been living on the present territory of the Republic of Poland for at least 100 years” has also been criticised as ancestors of members of a given minority might have lived in territories which now do not belong to Poland but did before WW2. That very condition does not take their migration into consideration. The issue of closed lists of minorities is also disputed. Particularly controversial is the fact that Silesians and Kashubians are not listed<sup>16</sup>, i.e. groups which according to the 2011 census<sup>17</sup> are the largest. In the 2011 census as many as 847 thousand people declared their Silesian identity and 233 thousand Kashubians declared their Kashubian identity. For comparison, 148 thousand people declared German identity and 51 thousand people declared Ukrainian identity.<sup>18</sup> Kashubians, in a way, have been recognised as the Act introduced a new notion of “a community speaking a regional language” and Kashubians have

<sup>13</sup> Cf. e.g. A. Kirszka (2008), *Status...*, pp. 19-22; J. Sobczak, *Języki regionalne i etniczne a problem tożsamości narodowej*, in: T. Gardocka, J. Sobczak (2010), *Prawa mniejszości narodowych*, Toruń, pp. 127-174.

<sup>14</sup> For a discussion on definitions of national and ethnic minorities see e.g. T. Gardocka (2010), *Mniejszości narodowe i etniczne - zagadnienie definicji*, in: T. Gardocka, J. Sobczak, *Prawa...*, pp. 94-102

<sup>15</sup> S. Łodziński (2005), *Wyrównanie czy uprzywilejowanie? Spory dotyczące projektu ustawy o ochronie mniejszości narodowych (1989-2005)*, Kancelaria Sejmu, Warszawa, [http://biurose.sejm.gov.pl/teksty\\_pdf\\_05/r-232.pdf](http://biurose.sejm.gov.pl/teksty_pdf_05/r-232.pdf), p. 21.

<sup>16</sup> Cf. K. Dolińska (2009), *Potoczny i ideologiczny poziom doświadczenia śląskości. Ślązacy w poszukiwaniu odrębności?*, Wrocław; C. Obracht-Prondzyński, *Spoleczność kaszubska*, in: S. Duda, B. Nitschke (2010) (ed.), *Mniejszości narodowe i etniczne w Polsce po II wojnie światowej*, Kraków; Z. Kurcz, *Postulowany naród śląski i śląska ideologia narodowa*, in: E. Michalik, H. Chałupczak (2006), *Mniejszości narodowe i etniczne w procesach transformacji oraz integracji*, Lublin, pp. 355-375.

<sup>17</sup> The 2011 census was very important for national and ethnic minorities because it included a question about nationality and ethnicity and for the first time respondents could give more than one answer to that question.

<sup>18</sup> *Przynależność narodowo-etniczna ludności – wyniki spisu ludności i mieszkań 2011* [Nationality and ethnicity – results of the 2011 census of population and housing], [http://www.stat.gov.pl/cps/rde/xbr/gus/Przynaloznosc\\_narodowo-etniczna\\_w\\_2011JNSP.pdf](http://www.stat.gov.pl/cps/rde/xbr/gus/Przynaloznosc_narodowo-etniczna_w_2011JNSP.pdf)

been recognised to be such a group/community. Hence some regulations on the use of a minority language apply also to the Kashubian language, in particular certain rights in the sphere of education, culture, and the use of that language in public and private life.<sup>19</sup>

#### EQUALITY PRINCIPLE

The non-discrimination clause is often considered a *sine qua non* condition for effective protection of national minorities<sup>20</sup> and thus the equality principle is greatly important to minorities. In two essential European documents, i.e. the European Convention on Human Rights<sup>21</sup> and the Charter of Fundamental Rights of the European Union<sup>22</sup>, national minorities are mentioned only in the non-discrimination clause<sup>23</sup> which underlines its importance.

In the Constitution of the Republic of Poland, the equality principle is contained in Article 32 which reads that all persons shall be treated equally and no one shall be discriminated against in political, social or economic life. The equality principle realisation in various spheres of social life is also guaranteed in other provisions of the Constitution: access to culture (Article 6.1), creation of political parties (Article 11.1), access to the public service (Article 60), protection of property/ownership (Article 64), access to health care services (Article 68.2), access to education (Article 70.4), electoral rights (Article 96.2, Article 127.1, Article 169.2). The repetitive underlining of citizens' equality in exercising their rights and freedoms is, in itself, a guarantee of those rights and freedoms for minorities.<sup>24</sup>

The Act additionally strengthens the Constitutional principle of non-discrimination against minorities by stipulating that public authorities are obliged to take appropriate measures in order to: 1) foster full and real equality in the economic, social, political, and cultural spheres of life between people belonging to minorities

<sup>19</sup> Articles 7-15 of the Act, more comments below in the part on language rights.

<sup>20</sup> Cf. e.g.: K. Henrard, *Non-discrimination and full and effective equality*, in: M. Weller (ed.) (2007), *Universal Minority Rights. A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, New York, pp. 75-147; G. Janusz (2011), *Ochrona...*, pp. 86-99.

<sup>21</sup> In Poland, the Convention for the Protection of Human Rights and Fundamental Freedoms came into force on 19 September 1993, Journal of Laws of 1993, No. 61, item 284.

<sup>22</sup> The Charter of Fundamental Rights of the European Union, Journal of Laws EU 2010/C 83/02.

<sup>23</sup> Article 14 of the European Convention on Human Rights provides: "The enjoyment of the rights and freedoms set forth in this European Convention on Human Rights shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, **association with a national minority**, property, birth or other status". Article 21.1 of the Charter of Fundamental Rights of the European Union provides: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, **membership of a national minority**, property, birth, disability, age or sexual orientation shall be prohibited."

<sup>24</sup> M. Safjan, *Pozycja mniejszości w Polsce w świetle orzecznictwa Trybunału Konstytucyjnego*, pp. 3-5, <http://www.trybunal.gov.pl/wiadom/Komunikaty/20031003/20031003.pdf>.

and people belonging to the majority; 2) protect people who are an object of discrimination, hostility or violence because of their belonging to a minority; 3) strengthen the inter-cultural dialogue.<sup>25</sup>

However, the enforcement of non-discrimination laws protecting people belonging to national and ethnic minorities does not seem to be sufficient and it is necessary to better prepare competent authorities to prevent violations and punish the violators. Legal solutions on provision of efficient anti-discrimination mechanisms to members of national and ethnic minorities are also criticised. That refers mainly to “multiple discrimination”<sup>26</sup> and “discrimination by association”<sup>27</sup> often experienced by members of national and ethnic groups.<sup>28</sup>

#### RIGHTS RELATED TO CULTURE

According to the Act, national and ethnic minorities are minorities essentially distinguished from the rest of the citizens by its own language, culture and tradition and guided by the will to maintain that language, culture and tradition. The legislator attributed special importance to rights related to education and culture. The basic source of rights of national and ethnic minorities is Article 35 of the Constitution which reads: “The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture”. Subsequently, it is specified that: “National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.” The first part obliges the state to take positive actions while the second one obliges it not to interfere and prohibits preventing minorities from exercising their rights.

Article 18 of the Act on National and Ethnic Minorities and Regional Language specifies the measures supporting activities aimed at the protection, preservation and development of minorities’ cultural identity. It imposes on public authorities the obligation to take appropriate measures including subsidies or rather grants from the state budget for: activities of cultural institutions; publication of books, magazines, periodicals, and leaflets; television programmes and radio broadcasts produced by

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<sup>25</sup> Article 6 of the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language.

<sup>26</sup> Multiple discrimination is one experienced by individuals because of their membership in different groups, i.e. on more than one ground.

<sup>27</sup> Discrimination by association takes place when a person associated with another person who belongs to a particular ethnic minority is treated less favourably because of that association.

<sup>28</sup> Conclusions of non-governmental organisations to the 3<sup>rd</sup> Report submitted to the Secretary General of the Council of Europe on the implementation of provisions of the Framework Convention for the Protection of National Minorities by the Republic of Poland of 13.12.2012. [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_SR\\_Poland\\_pl.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Poland_pl.pdf).

minorities; protection of places connected with the minority cultures; activities of community centres and libraries; education of children and youths realised in various forms; and popularisation of knowledge about minorities. The disburser of the grants is the minister responsible for religious denominations and national and ethnic minorities who every year announces procedures for their award.<sup>29</sup> The Act provides that the grants may be awarded without open tender.

In order to cultivate a group culture, it is important to reach members of the group via publications or broadcasts, for which, as written above, the Polish legislator foresaw grants for minorities. Moreover, Article 21 of the Act on (Radio and Television) Broadcasting (29 December 1992)<sup>30</sup> reads that the tasks of public radio and television resulting from their public mission include production and broadcasting and “taking due attention to the needs of national and ethnic minorities and communities speaking a regional language, including broadcasting of news in languages of national and ethnic minorities and regional languages”. That Act has also obliged directors of branches of public radio and television that while appointing programme boards of branch units which broadcast programmes in minority languages and regional languages, they must consider candidates proposed by social organisations of national and ethnic minorities and communities speaking a regional language. Thus the legislator ensured that minorities have access to mass media.<sup>31</sup>

#### RIGHTS RELATED TO EDUCATION

The Constitution of the Republic of Poland provides citizens belonging to national and ethnic minorities with rights related to education, stipulating that they have the freedom to preserve and develop their language, customs, tradition, and culture, and the right to establish their own educational institutions. The above has been expanded in the Act on National and Ethnic Minorities and Regional Language, Article 17 of which provides that education in the language of a minority or teaching the language of a minority, its history and culture shall take place in accordance with the principles and procedure laid down in the Act on Education System of 1991.<sup>32</sup> Article 13 of the Act on Education System reads: “public schools shall enable pupils to retain their sense of national, ethnic, linguistic and religious identity, and in particular, shall make it possible for them to learn their own language, history and culture.”

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<sup>29</sup> On 24 December 2012, the Minister of Administration and Digitisation announced detailed procedures for granting subsidies/grants for protection, preservation, and development of cultural identity of national and ethnic minorities and regional languages in 2014, <https://mac.gov.pl/wp-content/uploads/2012/11/Informacja-2014-autograf.pdf>.

<sup>30</sup> Journal of Laws of 1993, No. 7, item 34, as amended.

<sup>31</sup> More on the press of national and ethnic minorities in J. Mieczkowski (2010), *Perspektywy i zagrożenia w funkcjonowaniu prasy mniejszości narodowych i etnicznych w Polsce*, in: T. Gardocka, J. Sobczak, *Prawa...*, pp. 303-313.

<sup>32</sup> Journal of Laws of 1991, No. 95, item 425, as amended.

The teaching of and in a minority language is conducted at the request of parents and may take place in kindergartens, special groups, schools, or inter-school groups. The act provides that necessary textbooks and auxiliary study books may receive additional financing from the state budget. The Act foresaw that detailed conditions and modes of teaching and education were to be laid down in a regulation of the minister competent for education. The regulation in force was issued in 2007<sup>33</sup> that is after the Act on National and Ethnic Minorities and Regional Language came into force. That is why the regulation, apart from languages of national and ethnic minorities, applies also the recognised regional language, i.e. Kashubian.

The regulation grants the right to study the language, history, culture, and geography of the country with the culture of which a given minority identifies, and foresees the option of art classes and other supplementary activities at schools and kindergartens. Such education is organised by the head of the said public institution at a written declaration of parents, and in upper secondary education of students, expressing the desire for that type of education if the requisite number of declarations is received. The minimum number of students depends on the type of school: in kindergartens, primary schools, and lower secondary schools the minimum is 7 students, while in upper secondary schools it is 14 per one class in a year group. If the number of students is below the required thresholds, the teaching is conducted in inter-class groups or groups created by students from different years. The number of students in an inter-class group cannot be less than 14 and in an inter-year group it cannot be not less than 3 and more than 14. The Act provides also that in justified cases and upon consent of the school supervising authority, the number of students in classes and groups may be lower. Furthermore, if the number of students (declarations) in one educational institution is not high enough or there is no teacher, it is possible form a group of students from several kindergartens or schools. The group must consist of 3 to 20 students.<sup>34</sup> In addition, Article 11 of the regulation referred to above provides also for additional support for the Roma minority.

“1. Schools shall take, if required, additional measures aimed at sustaining and developing the sense of ethnic identity of Roma pupils and supporting the education of these students, particularly through compensatory [remedial] classes. 2. A school may employ a Romani education assistant to support the teacher. The Romani education assistant shall provide Roma students with support in contacts with the school community and cooperate with their parents and with the school”.

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<sup>33</sup> Regulation of the Minister of National Education of 14 November 2007 on the conditions and execution of tasks, by kindergartens, schools and public educational institutions, that facilitate the preservation of the sense of national, ethnic and linguistic identity of students belonging to national and ethnic minorities and communities speaking a regional language, *Journal of Laws of 2007, No. 214, item 1579, as amended*. The regulation repealed the regulation of the Minister of National Education and Sport of 3 December 2002 on the conditions and execution of tasks, by schools and public institutions, that facilitate the preservation of the sense of national, ethnic and linguistic identity of students belonging to national minorities and ethnic groups (*Journal of Laws No. 220, item 1853*).

<sup>34</sup> Articles 5-8 of the Regulation.

The number of hours of minority and regional language classes is regulated in another regulation<sup>35</sup> and depends on the type of school too. At primary schools providing education in a minority language, a minority language is the language of instruction 14 hours per week in years 1 to 3 and 12 hours per week in years 4 to 6. The latter number of hours, i.e. 12, is offered also in lower and upper secondary schools. In vocational schools there are as many hours of minority language classes as Polish language classes. Students from minorities who learn a minority language and/or other subjects in a minority language may take school-leaving exams (primary school and lower secondary school and upper secondary school) in the minority language (except for exams on Polish language and literature and history and geography of Poland). They may also choose their minority language as an obligatory exam subject (both oral and written examination parts).<sup>36</sup>

As regards education, the issue raised most frequently is that of financing the schools. Teaching a minority language or in a minority language requires additional funds and it seems that state authorities are not always able to effectively encourage schools to provide such education. An additional problem for a number of minorities, especially ethnic ones, is the issue of publishing text books.

#### LANGUAGE RIGHTS

Article 27 of the Constitution stipulates that “Polish shall be the official language in the Republic of Poland. This provision shall not infringe upon national minority rights resulting from ratified international agreements.”. The binding interpretation of “the official language” was provided by the Constitutional Tribunal already on 14 May 1997.<sup>37</sup> The Tribunal stated that the fact that Polish is the official language imposes on all central and local authorities the obligation to carry their administrative work in the Polish language. As the Tribunal wrote in the justification, the differentiation between the state language and the official language may be evoked by “a specific national structure of the society in a given country where ethnic minorities exist and there is a need to ensure their right to use their own national language.”. In such situations special legal regulations apply which determine the possible official use of a native language by citizens who do not speak the state language or feel the need to manifest their ethnic distinctness. The obligation to respect Polish as the state language and the official language rests with central and local authorities. It applies to citizens in an indirect way in situations where they fulfil their obligations towards “authorities and administrative offices”. In such situations, they must

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<sup>35</sup> Article 4.1 of the Regulation of the Minister of National Education and Sport of 12 February 2002 on the Framework Curricula in Public Schools, Journal of Laws of 2002, No. 15, item 142 as amended.

<sup>36</sup> Articles 36, 54, 55, 57, 58 of the Regulation of the Minister of National Education of 30 April 2007 on the terms and conditions of grading, classifying and promoting pupils and students as well as carrying out tests and examinations in public schools, Journal of Laws of 2007, No. 83, item 562 as amended.

<sup>37</sup> Resolution of the Constitutional Tribunal of 13 May 1997, W 7/96; Journal of Laws, No. 53.

take into account the fact that the working language of these entities is Polish. The Tribunal noted also that the limits on the applicability of the obligation to use the Polish language while addressing a citizen are “defined by Constitutional freedoms and civil rights”. In this manner the Tribunal indicated that a citizen of Poland who does not speak the state language or feels the need to manifest his or her ethnic distinctness has the right to use his or her native language in every situation where the use of the state language is not imposed.<sup>38</sup>

The significance of language rights<sup>39</sup> is demonstrated by the fact that in the Act on National and Ethnic Minorities and Regional Language, the legislator included the chapter on the use of minority languages immediately after general provisions and devoted as many as ten Articles, which concern various matters, to that issue. All provisions under the Act apply to a regional language (Kashubian) under the same terms and conditions as those applicable in the case of teaching national and ethnic minorities’ languages.

The first provision concerns the right to use and spell one’s name and surname in accordance with the pronunciation and spelling principles of a minority language. Polish citizens belonging to national minorities may administratively change their name and surname to a version consistent with their spelling in their native language<sup>40</sup>, which especially concerns those people whose surnames were obligatorily polonised in 1952 on the basis of an unpublished regulation issued by the then Prime Minister. As some names and surnames are originally written in an alphabet other than the Latin one, another regulation<sup>41</sup> was issued in 2005 which determines the manner of transliterating Belarusian, Lemko, Armenian, Russian, Ukrainian, Hebrew, and Yiddish names and surnames. Moreover, the transliteration of names and surnames in vital records consistent with their pronunciation and spelling in the native language is also provided for in provisions of bilateral treaties on good neighbourhood and friendly cooperation Poland signed with the Federal Republic of Germany, Ukraine, Belarus, and Lithuania.<sup>42</sup>

Article 8 of the Act provides citizens belonging to minorities with the right to use the minority language in private and public life and for the purpose of disseminating and exchanging information, posting information of private nature, and teaching/learning the minority language or in the minority language.

Article 9 introduces the option of using a minority language as an auxiliary language in contacts with authorities. This applies to communes where at least 20%

<sup>38</sup> M. Safjan, *Pozycja...*, pp. 6-8

<sup>39</sup> More on language rights in: G. Janusz (2011), *Ochrona...*, pp. 641-667; J. Plewko (2009), *Mniejszości narodowe w wymiarze lokalnym*, Lublin, pp. 102-122.

<sup>40</sup> Currently, this is regulated by the Act of 17 October 2009 on the Name and Surname Change; Journal of Laws of 2008, No. 220, item 1414, as amended.

<sup>41</sup> Regulation of the Minister of the Interior and Administration of 30 May 2005 on the manner of transliterating the names and surnames of persons belonging to national and ethnic minorities, written in an alphabet other than the Latin one, Journal of Laws of 2005, No. 102, item 855.

<sup>42</sup> G. Janusz (2010), *Prawa językowe mniejszości narodowych w Polsce*, in: T. Gardocka, J. Sobczak, *Prawa...*, pp. 178-180.

of the population belongs to a minority if the said communes have been entered in the Official Register of Communes in which an auxiliary language is used. It is the Minister competent for religious denominations and national and ethnic minorities who makes such an entry in the register upon an application of the Council of a given commune. The said application must contain both detailed statistical data on the commune and a resolution of the commune Council on the consent on the introduction an auxiliary language. First such bilingual communes were entered into the register in January 2006. Currently there are 31 bilingual communes registered including 22 where the auxiliary language is German, 5 with the Belarusian language, 3 with the Kashubian language, and in one with the Lithuanian language.<sup>43</sup>

Persons belonging to minorities and living in communes where an auxiliary language is used, may address local authorities in the recognised auxiliary language in writing and, at their explicit request, may receive replies in that language. Their motions and applications may also be written in the auxiliary language. The legislator, however, made it explicit that the appeal procedure shall be carried out in the official language only and that no one has the right to avoid the execution of a legal order or decision issued in the official language if circumstances require its immediate execution to meet the order or decision objective.

Another register<sup>44</sup> maintained by the Minister competent for religious denominations and national and ethnic minorities, into which communes may be entered, is the Register of communes in which place names in a minority language are used. On the basis of Article 12 of the Act on National and Ethnic Minorities and Regional Language, communes with at least 20% of the population being members of a minority, may, in addition to official place names, introduce traditional names of localities, physiographic objects and streets. If a number of residents belonging to a given minority is less than the statutory requirement, the commune must hold consultations on the introduction of a given name and half of its residents taking part in the consultations must support such a proposal. Moreover, the name must be accepted by the Commission on Names of Localities and Physiographic Objects (this requirement does not apply to names of streets). A motion must be presented on the initiative of the commune Council or residents and, later, it must be submitted by the commune

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<sup>43</sup> The list of communes entered in the Official Register of Communes in which an auxiliary language is used is available at <https://mac.gov.pl/wp-content/uploads/2011/12/Lista-gmin-wpisanych-do-rz%c4%99dowego-Rejestru-Gmin-w-kt%c3%b3rych-jest-u%c5%bcywany-j%c4%99zyk-pomocniczy.pdf>. The entry principles are regulated by the Regulation of the Ministers of the Interior and Administration on the Official Register of Communes Where an Auxiliary Language Is Used (30 May 2005), Journal of Laws of 2005, No. 102, item 856.

<sup>44</sup> According to the Regulation, there are two separate registers, i.e. of communes where additional names of streets are used and of communes where additional names of localities and physiographic objects are used. Article 2.2 of the Regulation of the Minister of the Interior and Administration on the Register of communes in which names in a minority language are used and sample forms of applications to enter in that Register and to determine an additional name of a locality or physiographic object in the language of a national or ethnic minority or in a regional language (30 May 2005), Journal of Laws of 2005, No. 102, item 857.

Council to the competent Minister. In the case of motions concerning the name of an inhabited locality, the commune Council is obliged to hold prior consultations with residents of that locality. The names cannot refer back to the names given by authorities of the Third Reich and the Union of Soviet Socialist Republics in 1933-1945. So far, alternative names have been introduced in 44 communes.<sup>45</sup> Specific regulations on placing additional names on signs and plaques in minority languages, regarding among others the size and font, are provided in the Regulation of the Minister of Infrastructure dated 10 August 2005.<sup>46</sup>

At this point, it is worth underlining that despite the fact that 7 years have passed since the Act was adopted, not many municipalities in which more than 20% of the population speaks a minority or regional language have taken advantage of the statutory opportunities. That has been noticed by central authorities<sup>47</sup> which try to encourage minority communities to exercise their rights provided by the Act.<sup>48</sup>

Translation/transliteration of names and texts on plaques of public offices or institutions, in other important places designed to spread information, in means of transport or intended for the public was possible prior to the adoption of the Act. Such options were provided by the Regulation of the Minister of the Interior and Administration of 2002.<sup>49</sup> It read that a foreign language into which place names and texts may be translated “should be in particular the language of national minorities or ethnic groups living in the territory of the Republic of Poland”. Moreover, the Regulation stipulated that translations in a foreign language in regard to national minorities and ethnic groups may be made public in localities in which such communities are organised.

#### PRIVILEGES RELATED TO ELECTORAL RIGHT

In order to make the chances of entities participating in elections equal, national minorities have been granted certain privileges in respect to the election law. In accordance with the electoral code, committees of national minorities which stand

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<sup>45</sup> Lists of communes entered in the Official Register of Communes in which an auxiliary language is used and the Register of communes in which names in a minority language are used are available at <http://mac.bip.gov.pl/rejstry/lista-gmin-wpisanych-na-podstawie-art-12-ustawy-z-dnia-6-stycznia-2005-r.html>, data as of 10.05.2013.

<sup>46</sup> Regulation of the Minister of Infrastructure on placing additional names in languages of national and ethnic minorities and in a regional language on signs and plaques (10 August 2005), Journal of Laws, No 157, item 1320.

<sup>47</sup> E.g. in the 3<sup>rd</sup> Report for the Secretary General of the Council of Europe on the implementation of provisions of the Framework Convention for the Protection of National Minorities by the Republic of Poland of 13.12.2012, [http://www.coe.int/t/dghl/monitoring/minorities/3-\\_FCNMdocs/PDF\\_3rd\\_SR\\_Poland\\_pl.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3-_FCNMdocs/PDF_3rd_SR_Poland_pl.pdf).

<sup>48</sup> J. Plewko (2009), *Mniejszości...*, pp. 111-113.

<sup>49</sup> Regulation of the Minister of the Interior and Administration on cases in which Polish names and texts may be accompanied by their translation into a foreign language (18 March 2002), Journal of Laws of 2002, No. 37, item 349, as amended.

in parliamentary elections do not have to meet the threshold of 5% of valid votes in the country. For this purpose, an electoral committee formed by voters who are members of registered minority organisations must provide relevant information to the State Electoral Committee 5 days before the date of elections at the latest. The information about the minority committee having been established should be supported by a document of a relevant statutory body of the national minority organisation confirming that the committee has been formed by voters who are members of that organisation. The State Electoral Committee will confirm the receipt of the above statement (information and the supporting document) and once the receipt is acknowledged, the statement is binding, i.e. the special electoral right (threshold) is granted.<sup>50</sup> This privilege, however, does not apply to coalition electoral committees.<sup>51</sup> So far, only the electoral committee of the German minority<sup>52</sup> has been successful, i.e. the minority has had its MP(s). In local elections minorities do not enjoy any preferences. Nevertheless, seats in local Councils have been won by candidates of German, Belarusian, Ukrainian, Lithuanian, Lemko, and Slovak electoral committees<sup>53</sup>.

In the dispute about the registration of the Union of People of Silesian Nationality as an association, one issue was that if it was registered under that name, it would obtain privileges granted to national minorities. Now, under the Act, any legal doubts which might have existed when attempts were made to register the Union of People of Silesian Nationality no longer exist as the Act contains a closed list of national and ethnic minorities. However, there are groups which have not been granted electoral privileges and are interested in obtaining them.

## CONCLUSIONS

Summing up, legal protection of national and ethnic minorities in Poland is comprehensive and meets European standards.<sup>54</sup> The basic document which regulates the status of minorities and grants them rights is the Act on National and Ethnic

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<sup>50</sup> Art. 197 of the Act of 5 January 2011 – Electoral Code, Journal of Laws of 2011, No. 21, item 112, as amended. Electoral preferences for minorities were already included in the Ordinance on elections to the Sejm of the Republic of Poland issued on 28 May 1993, Journal of Laws, No. 45 item 205.

<sup>51</sup> In accordance with the interpretation provided by the Constitutional Tribunal, the Election Ordinance does not provide for any exception to the electoral threshold of 8% for a coalition and that applies also to electoral committees of national minorities. Resolution of the Constitutional Tribunal of 30 April 1997, W 1/97; Journal of Laws, No. 50, item 324.

<sup>52</sup> Official website of the Electoral Committee of German Minority: <http://mniejszosniemiecka.eu/>.

<sup>53</sup> G. Janusz (2011), *Ochrona...*, pp. 678-688. Cf. also: J. Plewko (2009), *Mniejszości...*, pp. 175-183.

<sup>54</sup> See also A. Kirpsza, *Status prawny mniejszości narodowych i etnicznych w Polsce w świetle standardów Rady Europy*, in: J. Jaskiernia (ed.) (2012), *Efektywność europejskiego systemu ochrony praw człowieka*, Toruń, pp. 743-762.

Minorities and Regional Language which strengthens the Constitutional principle of non-discrimination against minorities and grants minorities rights related to education, culture, and the use of their language. In addition, the legislator provided the minorities with certain privileges in respect to the election law.

The new law is not perfect however. For instance, some conditions which must be met by minorities to be considered national or ethnic minorities in Poland and the differentiation between national minorities and ethnic minorities, have raised doubts. Also the lists of minorities are criticised and in particular the fact that they do not include the Silesian and Kashubian minorities. It is also important to note that the Act does not provide for the possibility (or the procedure) of granting the minority status to groups which demand it.

Another issue is the execution of some rights guaranteed in the Act. For instance, so far the current model of funding the education of children and teenagers belonging to minorities is not the best one. The same applies to funding radio and television programmes for minorities broadcast by the public radio broadcaster (Polskie Radio S.A.) and by the public television broadcaster (TVP S.A.). Other examples include bilingual place naming as in many communes entitled to do so that option has not been used. Also many communes entitled to be registered as bilingual (national and auxiliary language) have not registered as such. At present, public authorities take actions to encourage minority communities to exercise their rights provided under the Act to a fuller extent. Another area which seems to require improvement are regulation on combating discrimination.<sup>55</sup>

#### ABSTRACT

*In Poland national and ethnic minorities are protected by law and enjoy numerous rights especially in the sphere of language, education and culture. The basic document that regulates the status of minorities and grants them their respective rights is the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language, which strengthens the Constitutional principle of non-discrimination on grounds of belonging to a national or ethnic minority and grants the minorities rights related to education, culture and the use of their language. The aim of this paper is to review legal regulations pertaining to the protection of national and ethnic minorities in Poland, and to point out some problem areas. Issues discussed include definitions of national and ethnic minorities, the principle of equality before the law, rights related to education, culture and minority language as well as privileges in respect to the election law.*

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<sup>55</sup> The 3<sup>rd</sup> Report for the Secretary General of the Council of Europe on the implementation of provisions of the Framework Convention for the Protection of National Minorities by the Republic of Poland. 13.12.2012, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_SR\\_Poland\\_pl.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Poland_pl.pdf).