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## **The language problem of minorities in a homogeneous state. Comments on the example of the legal status of the Silesian, Kashubian and Wymysorys languages in Poland**

### **Introduction**

The aim of this article is to present the language situation of some regional minorities in Poland: Silesians (*Ślązacy*), Kashubians (*Kaszubi*) and the residents of Wilamowice. This issue is very broad hence the author's attention has been focused on the determination of the legal status of such minorities only and their right to use ethnic or regional languages in contact with the government bodies. This is a very significant problem because the population of Post-War II Poland became nearly completely ethnically homogeneous as a result of the German-Nazi Holocaust, the radically altered borders, the deportations ordered by Soviet state authorities, who wished to remove the sizeable Polish minorities from the Baltics (today Lithuania) and Eastern Europe (western part of today Belarus and western part of today Ukraine). It is worth emphasizing that at the 2011 National Census, only 1,55% of the 38 million inhabitants of Poland declared to be descendants of another single ancestry than Polish<sup>1</sup>.

Presently there are 3 categories of minorities according to the provisions of law – the Act of 6 January 2005 on national and ethnic minorities and the regional languages (hereinafter referred to as the Act of 2005)<sup>2</sup>: 9 national minorities (Byelorussians, Czechs, Lithuanians, Germans, Armenians, Rus-

<sup>1</sup> All data in this essay comes from website of the Statistic Poland: <https://stat.gov.pl/spisy-powszechno/nsp-2011/nsp-2011-wyniki/> (only in Polish, access: 28.5.2021).

<sup>2</sup> Ustawa z 6 stycznia 2005 r. o mniejszościach narodowych i etnicznych oraz o języku regionalnym (the Act of 6th January, 2005 on national and ethnic minorities and on the regional language, consolidated text in: Law Journal of 2017, item 823).

sians, Slovaks, Ukrainians, Jews<sup>3</sup>), 4 ethnic minorities (Karaimes, Lemkos, Roma, Tartars) and only one regional linguistic minority (Kashubians)<sup>4</sup>. The ethnic homogeneity index, which in recent years is at the level of nearly 95%, makes the country one of the most homogenous not only in Europe<sup>5</sup> but also worldwide. Also among the members of the European Union, the country stands out as exceptionally ethnically homogenous. However, Poland is not free from the discussion about language minority rights. In Poland (in other Central European countries alike), national and ethnic minorities, regardless of their sizes, are traditional (historic) groups rather than migrant ones. This is what makes them explicitly different from national (and ethnic) minorities occurring in the countries in Western Europe, which mostly are made of immigrants hardly integrating with the native population<sup>6</sup>.

However, the minority problem is very important to us for three reasons. First of all, lately, the residents of the Silesia region (Silesians) also want to be a national (or an ethnic) minority and they fight for it. Silesia (Śląsk) is a historical region in central Europe divided by the current national boundaries of Poland, Germany and the Czech Republic. There have been some debates on whether or not the Silesians constitute a distinct nation. Secondly, for several years, the inhabitants of Wilamowice have been fighting to preserve their language and their regional identity. The problem of minority rights is also important because ca. 3 million emigrants from Ukraine have come to Poland in the last 5 years<sup>7</sup>. For the first time since 1945, Poland is no longer a country of only Poles.

## The historical background

To describe the contemporary legal situation of language minorities, a short historical overview is required. Due to the small size of this study, the

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<sup>3</sup> D. Kuźnicka, *Mniejszość etniczna a mniejszość narodowa w Polsce – analiza porównawcza na przykładzie Łemków i Żydów*, [in:] J. Banach-Gutierrez, M. Jabłoński (eds.), *Aktualne problemy ochrony wolności i praw mniejszości w Polsce i na świecie i współpracy w Europie*, Wrocław 2017, p. 181 ff.

<sup>4</sup> On a side note, it is worth mentioning here that this method of enumerative calculation of minorities is in line with that adopted by Hungary or Croatia. (among others: *Ustavni zakon o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj*, consolidated text in: "Narodne novine" br. 72/2000).

<sup>5</sup> A. Malicka, *Status prawny mniejszości narodowych i etnicznych w Polsce – ustawa o mniejszościach narodowych i etnicznych oraz języku regionalnym*, [in:] J. Banach-Gutierrez, M. Jabłoński (eds.), *Aktualne problemy ochrony wolności i praw mniejszości w Polsce i na świecie*, seria: E-Monografie Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, nr 95, Wrocław 2017, p. 55; M. Ratajczak, *Mniejszości narodowe i etniczne w polskich mediach publicznych w Polsce*, *Mniejszości narodowe i etniczne w polskich mediach publicznych w Polsce*, "Rocznik SNPL" 2017, vol. 17, p. 394.

<sup>6</sup> W. Kundera, *Mniejszości narodowe w Polsce – zarys historyczno-prawny*, "Studia Prawa Publicznego" 2018, no. 9, p. 111.

<sup>7</sup> *Ibidem*, p. 111.

gradual formation of Poland as a multinational country is described only in very general terms, while disregarding completely the political discussion. Throughout a long period of its existence, Poland has been a multi-cultural country populated by representatives of different national groups<sup>8</sup>. The scholars mention that presence of national and ethnic minorities in Poland was largely the result of the eastward and north-eastward expansion of Poland that was started in the 15<sup>th</sup> century by king Casimir the Great<sup>9</sup>. As a result, the areas populated primarily by the progenitors of present Ukrainians and Byelorussians were included in the Polish national borders. Then, by establishing political alliances with other states (the unions of 1385 and 1569 between the Crown of the Kingdom of Poland and the Grand Duchy of Lithuania), the formation of a multinational state and strong integration of Poles and Lithuanians continued<sup>10</sup>. Furthermore, immigrant population centres began to appear in the 11<sup>th</sup> and 12<sup>th</sup> centuries. Those were mostly Jews seeking sanctuary from persecutions that had started to arise in Central and Western Europe and, since the 12<sup>th</sup> and 13<sup>th</sup> century, also Germans who settled mainly in towns. Simultaneously, the loss of northern and western areas of contemporary Poland (Pomerania, Warmia, Silesia), which began in the 14<sup>th</sup> century and lasted until 1945<sup>11</sup>, turned those areas into a territory where various national, ethnic and cultural influences intermingled. Among the immigrant population, there were also the Tartar (refugees from the Golden Horde and captives taken into slavery by the Grand Duchy of Lithuania), the Karaim who came from the Crimea<sup>12</sup> and originated from the Khazar population assimilated with other Turkish-speaking peoples, and Armenians.

As already mentioned, the national and ethnic situation of Poland changed radically after 1945. Scholars highlight that the Second World War brought a drastic change in Poland's national structure<sup>13</sup>. It was caused by the Holocaust and systematic persecution and murder of the Roma people, the loss of eastern territories together with the national minorities that lived there, and the incorporation of Pomerania, Warmia and Silesia. The main objective of the minority policy – according to academics – pursued in that period was to establish a mono-ethnic society deprived of national and ethnic mi-

<sup>8</sup> Ibidem, p. 109; A. Malicka, op. cit., pp. 57–58.

<sup>9</sup> A. Rykała, *Mniejszości narodowe i etniczne w Polsce z perspektywy geografii politycznej*, "Acta Universitatis Lodzianensis, Folia Geographica Socio-Oeconomica" 2014, no. 17, p. 70; W. Kundera, op. cit., p. 112.

<sup>10</sup> Ibidem, pp. 71–72.

<sup>11</sup> Ibidem, pp. 72–73, 81.

<sup>12</sup> A. Rykała, *Mniejszość religijna – mniejszość etniczna – wspólnota kulturowa. Uwagi na temat genezy, aktywności i tożsamości Karaimów w Polsce*, "Acta Universitatis Lodzianensis, Folia Geographica Socio-Oeconomica" 2011, no. 11, pp. 81–89.

<sup>13</sup> P. Majdańczyk, *Mniejszości narodowe w Polsce po II wojnie światowej*, "Pamięć i Sprawiedliwość" 2004, no. 3/2 (6), p. 37; A. Malicka, op. cit., p. 58.

norities<sup>14</sup>. A deliberate effort was made to build a nation-state in which there was no place for minorities, and where nationality and citizenship were supposed to be identical. The objective was essentially achieved<sup>15</sup>.

Poland's policy towards non-Polish nationalities – according to the view of scholars – that lived in the country was restrictive at that time<sup>16</sup>. Efforts were made to assimilate them by eliminating minority population centres, resettlement (of mainly Germans and Ukrainians), discrimination, controlling their social and cultural activities, and isolation from their home countries<sup>17</sup>. The presence of representatives of the minorities in public life and media was eradicated. Their organizational activities (including societies, foundations) were limited and placed under full supervision, basically turning it into folklore. In such circumstances, the minority organizations, except the Jewish ones, were mostly elusive, as the experts wrote<sup>18</sup>. Education of minorities was limited (until complete liquidation), especially the possibility of teaching in the minority languages. Furthermore, the languages of the minorities and their national symbols were removed from the legislation and everyday public life. It's safe to say that by doing so Poland became completely polonised<sup>19</sup>. The state authorities did not treat minorities equally, which manifested in many ways, including, *inter alia*, expressing a relative tolerance for some minorities, while restricting others. In the concept of a nationally homogenous state, there was no place for non-Polish social groups.

A substantial change in the attitude of state authorities towards minorities took place after 1989, along with a change in the political system. Currently, great importance is attached to the protection of minorities, and legal standards in that regard are very high<sup>20</sup>.

### **The most important actions undertaken by the state and legal acts concerning the protection of language minority rights**

Protection of national and ethnic minorities has a long history but issues related to them are still disputed. That is why protection guarantees are part of legal solutions at the universal, regional, and national levels. Since the end

<sup>14</sup> M. Barwiński, *Mniejszości narodowe i etniczne w polskiej przestrzeni publicznej*, "Studia z Geografii Politycznej i Historycznej" 2016, vol. 5, pp. 93–94.

<sup>15</sup> P. Majdańczyk, op. cit., p. 38; W. Kundera, op. cit., p. 123.

<sup>16</sup> M. Barwiński, op. cit., p. 93.

<sup>17</sup> For more on the repression against Germans, Ukrainians, Slovaks and Lithuanians see, among others: W. Kundera, op. cit., p. 118 ff; A. Malicka, op. cit., p. 58.

<sup>18</sup> A. Rykała, *Mniejszości narodowe...*, p. 86.

<sup>19</sup> W. Kundera, op. cit., p. 118 ff.

<sup>20</sup> Ibidem, p. 125 ff; A. Malicka, op. cit., p. 59.

of the Second World War, the attempts to precisely determine the national origin of the people populating Poland within its present borders have failed. The reason for this was mostly refraining from addressing that question in Censuses. Only the National Census in 2002, which contained a question about national identification for the first time since the War, provided some data about the national and ethnic structure of Poland's population. The scholars mention, it turned out that non-Polish nationality population lives mainly in three provinces: Silesian (*województwo śląskie*: 39.5% of the whole population claimed non-Polish national identity), Opole (*województwo opolskie*: 28.3%) and Podlaskie (*województwo podlaskie*: 11.7%)<sup>21</sup>. One ethnic minority (Kashubians) was identified in the Pomeranian Province (*województwo pomorskie*)<sup>22</sup>. The experts mention that the 2011 National Census provided additional data on Poland's structure of nationalities<sup>23</sup>. The results led to a conclusion that Poland's population is dominated by 97.1% by homogenous Polish national identity. 1.55% of people declared only a non-Polish national-ethnic identity, of which 0.12% of respondents identified themselves with two non-Polish nationalities<sup>24</sup>.

Since 1990 work has been undertaken to pass legislation that would be "a constitution of minorities". The first draft of such a law (The draft act on rights of persons belonging to national and ethnic minorities) was developed in 1993 under the Helsinki Foundation for Human Rights<sup>25</sup>. A debate over the draft<sup>26</sup> took place in 1994 and 1996 within the framework of the parliamentary committees. Another draft was discussed in 1999 and it reached the first reading at the Parliament<sup>27</sup>.

In 1989 the Act to Guarantee the Freedom of Conscience and Faith<sup>28</sup> was signed, which was of great significance for minorities, as most of them were of another faith than ethnic Poles<sup>29</sup>.

The Constitution of the Republic of Poland on the 2nd of April 1997<sup>30</sup>, provides basic guarantees for Polish citizens who are members of national, ethnic and other minorities. According to Art. 32 of the Constitution, all persons shall be equal before the law. It means – most of all – that all persons

<sup>21</sup> See footnote 1.

<sup>22</sup> A. Rykała, *Mniejszości narodowe...*, pp. 88–89.

<sup>23</sup> Ibidem, p. 101.

<sup>24</sup> See footnote 1.

<sup>25</sup> A. Malicka, op. cit., p. 60.

<sup>26</sup> Described the discussion in detail: B. Machul-Telus, *Mniejszości narodowe i etniczne w Polsce*, [in:] A. Bartuś (ed.), *Granice wolności*, Oświęcim 2015, pp. 46–47.

<sup>27</sup> A. Malicka, *Status prawny mniejszości...*, p. 60.

<sup>28</sup> Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania (t.j. Dz.U. z 2017 r., poz. 1153), the Act of 17th May, 2005 on national and ethnic minorities and on the regional language, consolidated text in: "Dziennik Ustaw" 2017 item 1153.

<sup>29</sup> W. Kundera, op. cit., p. 127.

<sup>30</sup> Text published in "Dziennik Ustaw" 1997, no. 78, item 483, as amended.

shall have the right to equal treatment by public authorities. No one shall be discriminated against in social, political or economic life for any reason whatsoever<sup>31</sup>. This basic and general guarantee of equality also applies to ethnic and national minorities. The concept of minority rights protection has been thus included in the principle of equal treatment (or non-discrimination) which requires respect for the differences occurring between particular categories of social groups.

According to academics<sup>32</sup>, the equality principle realisation in various areas of public life is also guaranteed in other provisions of the Constitution. One can mention f.e. access to culture (Article 6.1), creation of political parties (Article 11.1), access to the public service (Article 60), protection of property (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) and others. The Constitution also includes the right to free use of minority languages in private life and public (Art. 27 of the Constitution).

The legal situation of the minority is also directly regulated in Art. 35 of the Constitution, which stipulates that the Republic of Poland shall ensure Polish citizens belonging to national and ethnic minorities the freedom to maintain and develop their language, to maintain customs and traditions, and to develop their own culture. It is also the case law of the Constitutional Tribunal about this principle that plays a major role<sup>33</sup>.

At the level of the provincial administration, Polish law allows plenipotentiaries for national and ethnic minorities to be appointed at the office of the local governors (voivode, *wojewoda* in *Polish*)<sup>34</sup>. Whereas initially it was assumed that such positions would be created mostly in the areas where minorities are quite numerously represented (e.g. in the Silesian or Pomeranian Province), currently there are plenipotentiaries for national and ethnic minorities working at offices of all the local governors.

The world experience shows that the problem of minority languages protection is one of the most vulnerable ones when it comes to specifying the legal status of particular national, ethnic or regional groups. As a result of numerous and heated discussions (particularly at the final stage of work), the Act of

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<sup>31</sup> W. Kundera, op. cit., p. 126 ff; A. Malicka, op. cit., p. 71.

<sup>32</sup> G. Baranowska, *Legal regulations on national and ethnic minorities in Poland*, "Przegląd Zachodni" 2014, no. 2, p. 39.

<sup>33</sup> OTK 2001 no. 7, p. 1080; judgement of the Constitutional Tribunal of 24th February 1999, SK 4/98, OTK 1999, no. 2, item 24, pp. 158–159; judgement of the Constitutional Tribunal of 18th April 2000, K 23/99, OTK 2000, no. 3, item 23, p. 450.

<sup>34</sup> Ustawa z dnia 23 stycznia 2009 r. o wojewodzie i administracji rządowej w województwie (Act of 23th January, 2009 on the voivode and government administration in the voivodship), text published in "Dziennik Ustaw" from 2019 item 1464. The "voivode" means the centrally-appointed governor of a Polish region and "voivodship" means the region, the highest-level administrative subdivision of Poland, corresponding to a "province" in other countries.

2005 was passed. Adoption of the law was Poland's ultimate recognition of the multinational character of the society living in its territory. It is the basic document that regulates the status of minorities and grants them their respective rights. The Act of 2005 regulates the issues connected with the maintenance and development of the respective cultural identity of national, ethnic and regional minorities, the preservation and development of the regional language, and the observance of the principle of equal treatment of individuals irrespective of their ethnic descent; it also defines the tasks and powers of government administrative agencies and local government units in this regard. The Act of 2005 defines the meaning of national and ethnic minority, regulates the use of a minority language (Chapter 2) and regional language (Chapter 4), forms of the education and culture (Chapter 3) and governmental and local authorities and agencies in charge of national and ethnic minorities (Chapter 5). It is important to note that the Act of 2005 does not differentiate between the freedoms and rights of national and ethnic minorities unless the other acts provide otherwise. It is worth mentioning that the judgement of the Constitutional Tribunal dated 13th May 1997<sup>35</sup> explains the legal consequences for a citizen using the language of a minority in contact with the state. In the Tribunal's opinion, a Polish citizen having no command of the national language or feeling the urge to manifest their ethnic distinctiveness, have the right to speak their native language everywhere where the use of the state language is not imposed.

Additionally, Polish law provides them with some "privileges" that ethnic Poles do not have, for instance, a lower Parliament election threshold. It is worth noting that there is a law on electoral privileges for election committees that applies to national minorities only<sup>36</sup>. So far, it has been benefitted only by the German and Byelorussian minority<sup>37</sup>.

## **The notion of national and ethnic minority**

As far as political geography is concerned, a minority is a group of people that is less numerous than the rest of the population within the area it inhabits. When a minority group is determined by the national-ethnic identity of its members, we can speak of the existence of a national or ethnic minority. Thus,

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<sup>35</sup> Judgement of the Constitutional Tribunal of 13 May 1997, W 7/96, OTK 1997, no. 2, item 27.

<sup>36</sup> Judgement of the Constitutional Tribunal of 30 April 1997, W 1/97, text published in "Dziennik Ustaw" 1997, no. 50, item 324.

<sup>37</sup> In the judgement of the Constitutional Tribunal of 8 April 1997, K 14/96, emphasized that the said regulation was based on the principle of levelling the chances for all Polish citizens who belong to national minorities within their participation in the representative bodies. See OTK no. 2/1996, item 14.

a national (ethnic) minority, according to scholars<sup>38</sup>, is a group of country's population that differs from the majority of its population (its citizens) with its national (ethnic) identity, usually the language used daily, its tradition, as well as other values or characteristics that consolidate it in more or less developed awareness of distinction. On the other hand, definitions of sociological nature refer to minorities through a criterion of discrimination<sup>39</sup>.

It is worth noting that despite a growing international interest in the issue of minorities at the turn of the 19<sup>th</sup>/20<sup>th</sup> centuries, there is now no single and commonly acknowledged definition in place that would precisely specify national and ethnic minorities, be it in terms of law or non-law<sup>40</sup>. As a rule, definitions developed for the sake of a specific legal act were made use of, which still is the standard practice of international law. Therefore, it happens that having to deal with international law, we come across various definitions of the national minority phenomenon<sup>41</sup>. Such a definition had not existed in Polish law either until the Act of 2005 was passed.

A legal definition one can find in the Act of 2005. By defining the notions of national and ethnic minorities, the Act of 2005 has filled a legal vacuum, joining the group of a few countries in Europe that have already defined the notion of a minority and have come up with respective rights (like in Belgium, Netherlands, Latvia, Lithuania, Belarus, Ukraine and in Hungary).

International law does not present a universal legal definition for the notion of a national and ethnic minority, neither had it existed in the internal Polish law until the said Act of 2005 was passed. As a rule, definitions developed for the sake of a specific legal action were made use of, which still is the standard practice of international law. Therefore, dealing with international law, it often happens that we come across various definitions of the notion of national minorities<sup>42</sup>.

According to Article 2.1 the Act of 2005, a national minority shall be a group of Polish citizens who jointly fulfil the following conditions: (1) is numerically smaller than the rest of the population of the Republic of Poland; (2) significantly differs from the remaining citizens in its language, culture or tradition; (3) strives to preserve its language, culture or tradition; (4) is

<sup>38</sup> A. Rykała, *Mniejszości narodowe...*, p. 64; D. Kuźnicka, op. cit., p. 167 ff.

<sup>39</sup> B. Machul-Telus, op. cit., p. 43; D. Kuźnicka, op. cit., p. 167 ff.

<sup>40</sup> A. Malicka, *Ochrona mniejszości narodowych – standardy międzynarodowe i rozwiązania polskie*, Wrocław 2004, p. 11 ff; W. Wereszko, *Parlament Europejski jako rzecznik mniejszości narodowych i etnicznych w Unii Europejskiej*. "Rocznik Europeistyczny" 2019, no. 5, p. 87; D. Kuźnicka, op. cit., p. 167 ff; G. Janusz, *Definiowanie mniejszości w dokumentach międzynarodowych i aktach prawa wewnętrzznego*, "Annales Universitatis Mariae Curie-Skłodowska", Sectio K 2008, vol. 15, p. 96 ff.

<sup>41</sup> W. Wereszko, op. cit., p. 87; T. Witkowski, *Prawa mniejszości w Organizacji Bezpieczeństwa*, [in:] J. Banach-Gutierrez, M. Jabłoński (eds.), op. cit., pp. 33–34.

<sup>42</sup> A. Malicka, *Ochrona mniejszości narodowych...*, p. 11 ff; D. Kuźnicka, op. cit., p. 169.

aware of its own historical, national community, and is oriented towards its expression and protection; (5) its ancestors have been living on the present territory of the Republic of Poland for at least 100 years; (6) identifies itself with a nation organized in its state. The following minorities shall be recognized as national minorities: Byelorussians, Czechs, Lithuanians, Germans, Armenians, Russians, Slovaks, Ukrainians, Jews.

According to Article 2.3 the Act of 2005, an ethnic minority shall be a group of Polish citizens who jointly fulfil the following conditions: (1) is numerically smaller than the rest of the population of the Republic of Poland; (2) significantly differs from the remaining citizens in its language, culture or tradition; (3) strives to preserve its language, culture or tradition; (4) is aware of its own historical, national community, and is oriented towards its expression and protection; (5) its ancestors have been living on the present territory of the Republic of Poland for at least 100 years; (6) does not identify itself with a nation organized in its state.

One can notice that being recognized as a national or ethnic minority depends on the “limit of time” during which a given group has been living on the territory of Poland. This definition has a very specific point, adopted from the Hungarian Act on the rights and national minorities, setting the “limit of time” which requires at least 100 years of the given group’s status as Polish citizens to be named a minority<sup>43</sup>. During the work on the draft of the Act of 2005, it was agreed that its provisions should cover the historic minorities, i.e. those who existed in the territory of Poland both at the decline of the I Republic of Poland (The Polish-Lithuanian Commonwealth) and after 1918 when Poland was regaining its independence. The criterion of the “limit of time” is considered to be the most controversial both in the doctrine and in political discussions.

However, this definition also requires the fulfilment of other conditions. Under the Act of 2005, a national (or ethnic) minority should be aware of its historical national community and be oriented towards its expression and protection. In addition to that, it should differ from the remaining citizens in its language, culture or tradition, while at the same time striving to preserve them.

During the legislative procedure, some minorities protested against the “division” into national and ethnic minorities<sup>44</sup>. After the Lower Chamber of the Polish Parliament (*Sejm*) approved of the Act in 2004 and referred it to the Upper House (*Senat*) 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

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<sup>43</sup> The “limit of time” is specified in Hungarian act of 7th July 1993 (no. LXXVII) on the rights and national minorities (§ 1 sec. 2).

<sup>44</sup> G. Baranowska, op. cit., p. 35.

protesting against such a division which they considered “deeply humiliating”. It is worth mentioning that scholars highlight that the Act of 2005 was the first law in Polish history that lawfully recognized the Lemko as a separate group. Until then that ethnic minority had been often identified as the Ukrainian national minority<sup>45</sup>.

Not all the nationalities currently living in Poland are covered by the regulations of the Act of 2005. That is because one of its assumptions – in the opinion of experts<sup>46</sup> – was to regulate all matters related to the functioning of the so-called traditional (historical) minorities which have for centuries been connected with the Polish state, unlike the “new” so-called immigrant minorities. Because of this, some quite large national communities considering Polish conditions, such as Greeks, Macedonians, Turkish or Vietnamese, are not included in the notion of minorities. This does not mean that all other non-Polish nationalities cannot cultivate their distinction, identity, language and culture<sup>47</sup>. They can also perform their social and organizational activity, develop education, and their discrimination is prohibited by other legal acts of law, including, *inter alia*, the constitution and legislation. Yet, they do not have several additional rights and privileges (including the political, language and financial ones) that apply only to communities included in the Act of 2005.

### Language rights of national, ethnic and regional minorities

Language is one of the most important cultural and social determinants of belonging to a specific national or ethnic group. Experts highlight that according to the data obtained during the 2002 Census, 563,000 people used languages other than Polish for communication at home (52,000 communicat-

<sup>45</sup> M. Hopej, *Lemkowska mniejszość etniczna w polskiej przestrzeni społecznej*, [in:] *Znaczenie mniejszości etnicznych, narodowych i językowych w Europie*, “Zeszyty Naukowe Koła Wschodnioeuropejskiego Stosunków Międzynarodowych” 2015, p. 56; E. Michna, *Tożsamość Lemków u progu XXI wieku. Ciągłość i zmiana*, “Studia Migracyjne – Przegląd Polonijny” 2011, no. 4(142), p. 189 ff; M. Barwiński, *Współczesna tożsamość etniczna i kulturowa Lemków na obszarze Lemkowszczyzny – uwarunkowania i konsekwencje*, “Acta Universitatis Lodziensis. Folia Geographica Socio-Oeconomica” 1999, no. 2, s. 123; D. Kuźnicka, op. cit., p. 180 ff. According to the data contained in the 2011 National Census, 10531 respondents identified themselves as Lemko where 5612 of them (53,3%) declared being homogenously Lemko and 4919 (46,7%) 28 a combined origin, including 3621 declaring as Polish-Lemko. See more: *Ludność według rodzaju i kolejności identyfikacji narodowoetnicznych w 2011 r. Ludność. Stan i struktura demograficzno-społeczna. Narodowy Spis Powszechny Ludności i Mieszkań 2011*, p. 260.

<sup>46</sup> M. Barwiński, *Mniejszości narodowe...*, p. 95; A. Skóra, *Wniesienie podania w języku mniejszości narodowej do organu administracji publicznej*, “Gdańskie Studia Prawnicze” 2005, no. 14, p. 412.

<sup>47</sup> M. Barwiński, *Mniejszości narodowe...*, pp. 95–96.

ed only in a different language)<sup>48</sup>. Thus, Polish was used at home by 97.8% of Poland's population. On the other hand, according to the 2011 Census, more than 948,000 people used languages other than Polish at home, representing 2.46% of the entire Poland's population<sup>49</sup>.

According to Article 27 of the Constitution, 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. It means that all central and local administrative authorities, all courts and tribunals and other public authorities, must carry their administrative work in the Polish language. It also means that citizens must take into account the fact that the working language of these above mentioned public authorities is Polish. It should be noted that the constitutional provisions on language protection do not directly apply to a regional language. The guarantees for its protection are set out in the Act of 2005. According to academics<sup>50</sup>, the importance of language rights of minorities is demonstrated by the circumstance that in the Act of 2005, the legislator included the chapter on the use of minority languages immediately after general provisions and devoted several provisions, which concern various matters, to that issue. Article 8 of the Act of 2005 stipulates, that persons belonging to a minority shall have the right, in particular, to use freely their minority language in public and private life, spread and exchange information in their minority language, run information of a private nature in their minority language, learn their minority language or to be instructed in this language.

One of the more significant minority rights provided by the act is the possibility of using minority languages as supporting (*język pomocniczy*) before the municipal authorities. Article 9 of the Act of 2005 introduces the option of using a minority language as a supporting language in contact with municipal authorities. But it is important to mention that a supporting language might be used only in these municipalities where the number of minority residents, whose language is to be used as a supporting one, is no less than 20 per cent of the total number of the municipality residents and who have been entered into the Official Register of Municipalities, where a supporting language is used. The possibility to use a supporting language shall mean that persons belonging to a minority, shall have the right to apply to the municipal authorities in the supporting language, either in a written, electronic oral form and obtain, on his or her distinct request, an answer in the supporting language, either in a written, electronic or oral form. As I mentioned in one of my papers<sup>51</sup>, oral, electronic or written applications in a supporting language during the

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<sup>48</sup> A. Rykała, *Mniejszości narodowe...*, p. 95.

<sup>49</sup> See footnote 1.

<sup>50</sup> G. Baranowska, op. cit., p. 44; A. Skóra, op. cit., p. 413.

<sup>51</sup> A. Skóra, op. cit., p. 415.

conduct of administrative proceedings shall be allowed. The submission of an application in a supporting language shall not constitute a reason for turning the application down without examination. This provision is particularly important because without this legal solution lodging an application in a foreign language is qualified as a formal defect of an application according to Article 64 of the Polish Code of Administrative Proceedings<sup>52</sup>. The experts have noticed that the first such bilingual communes were entered into the register in January 2006<sup>53</sup>. Currently there are 33 bilingual communes registered including 5 where the supporting regional language is Kashubian (*kaszëbsczi jãzëk, język kaszubski*) in *województwo pomorskie* – Pomeranian Province – in 5 municipalities: Linia, Luzino, Parchowo, Sierakowice and Żukowo<sup>54</sup>. And only four minorities fulfil the criterion enabling the local governments to meet the expectations of people who report non-Polish nationality identification: Byelorussian, Lithuanian, German and Kashubian. The representation of minorities who have „language privileges” and the number of municipalities where they could use their minority language as supporting have not changed. To summarize, a citizen of Poland has the right to use their native language in every situation where the use of the state (official) language is not imposed. However, as scholars mention, submitting applications in minority languages is sporadic<sup>55</sup>. It is much more frequent than persons submit oral applications in German, Lithuanian, Kashubian or Byelorussian. Members of minorities emphasize that it is more important for them to have the right of using their native tongue in offices than its practical use.

On September 25, 2015, the Polish Parliament passed an amendment to the Act of 2005. The changes concerned, inter alia, art. 9 and introducing the possibility of using an auxiliary language also before district (*powiat*) authorities. However, the act was not signed by the President of the Republic of Poland and amendments did not enter into force. It should be emphasized that in practice, there were 4 districts, Kashubian included, in which – following the provisions of the Act of 2005 – the conditions for introducing an auxiliary language were fulfilled<sup>56</sup>.

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<sup>52</sup> Ustawa z 14 czerwca 1960 r. Kodeks postępowania administracyjnego (act of 14th of June 1960 – the Code of Administrative Proceedings), consolidated text published in “Dziennik Ustaw” 2020, item 256, as amended.

<sup>53</sup> G. Baranowska, op. cit., p. 45.

<sup>54</sup> There are other 26 municipalities with the languages of national minorities: 5 municipalities with the Belarusian (Orla, Hajnówka – rural and urban municipalities, Czyże, Narew, Narewka), 1 with the Lithuanian (Puńsk) and 22 with German.

<sup>55</sup> M. Barwiński, *Mniejszości narodowe...*, p. 97.

<sup>56</sup> See <https://www.prezydent.pl/prawo/ustawy/zawetowane/art,2,prezydent-zawetowal-trzy-ustawy.html> (access: 28.05.2021).

## **The problem of the legal status and the right to use a minority language of the Silesian, Kashubian minorities and the residents of Wilamowice in contemporary Poland**

The basis for the Polish definition of a regional language are the provisions of the European Charter for Regional or Minority Languages<sup>57</sup> It is worth emphasizing that the provisions of the Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements (Art. 4.1 of the Charter).

According to Art. 1 of the European Charter for Regional or Minority Languages, “minority language” means language that is traditionally used within a given territory of a state by nationals of that State who form a group numerically smaller than the rest of the state’s population and is different from the official language(s) of that state; it does not include either dialect of the official language(s) of the State or the languages of migrants. Provisions of the European Charter for Regional or Minority Languages make the basis for the Polish definition of a regional language. Regarding the use of a regional language, the Polish Act of 2005 refers to respective regulations on support languages and the provisions on the use of additional names to towns and villages in minority languages.

As already mentioned, regional language – under Polish law – is not the language of community members, even with Polish citizenship, who are immigrants or descendants of immigrants originating from a community with organized statehood or who do not have their roots in such a community. The status of a regional language may be granted to the language of the community which traditionally considers itself part of the nation inhabiting the territory of Poland. Moreover, such a language should traditionally be used by communities (it cannot be a new linguistic creation) that are not numerically dominant in the territory of the country.

From the perspective of the number of speakers, Silesian is the second most widely spoken language in Poland after the country’s sole official and national language of Polish. The status of the Silesian minority is particularly challenging for the Polish authorities at present<sup>58</sup>. The question of recog-

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<sup>57</sup> Following the ratification of the European Charter for Regional or Minority Languages in 2009, the then present Ministry for Administration and Digitalisation launched an all-Polish campaign promoting regional languages among others. The undertaken actions were supposed to serve such goals as spreading the knowledge on the regulations of the European Charter for Regional or Minority Languages. The speakers of the regional Kashubian language were encouraged to a broader employment of their right to use the support language.

<sup>58</sup> *Ibidem*, p. 96; A. Rykała, *Mniejszości narodowe...*, p. 87.

nizing the Silesian minority (as national or ethnic) has been highly controversial since the mid-1990s. During the 2002 Census, more than 173,000 people were declared to be of „Silesian nationality”, which represented, as I have mentioned, 39.5% of the Silesian Province population. Concurrently, that made Silesians the most numerous minority and escalated the current political conflict. While referring to those data, representatives of the non-registered Association of Population of Silesian Origin tried to have the Silesians recognized as an ethnic group in the Act of 2005 and the Silesian language recognized as the second regional language beside Kashubian. The Polish Parliament, however, rejected these demands. The efforts increased after another Census in 2011 during which 846,000 people declared that their nationality is Silesian<sup>59</sup>. Since 2011, new draft amendments of the act of 2005 have been sent from time to time to the Parliament and to have Silesian recognized as a regional language. Furthermore, drafts have appeared aimed at recognizing the Silesian community as an ethnic minority. So far, 6 drafts amending the Act of 2005 have been submitted, both in terms of granting Silesian the status of a regional language and including the Silesian community among ethnic minorities. In September 2012 the Association of Population of Silesian Nationality was registered, however, after the appeal in December 2013, the Supreme Court concluded that Silesians cannot be recognized as a separate nation and, therefore, the Association of Population of Silesian Nationality (*Związek Ludności Narodowości Śląskiej*) should not be registered under that name. The governmental head of province (*wojewoda*) of the Silesian province (*województwo śląskie*) who opposed the registration of the *Związek Ludności Narodowości Śląskiej* under such a name, applied an appeal<sup>60</sup>. The civil appellate court revoked 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>61</sup>. The appellate court drew attention to the fact that a consequence of registering the Union would be granting 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>62</sup>. Later, the association lodged its complaint against Poland with the European Tribu-

<sup>59</sup> M. Barwiński, *Mniejszości narodowe...*, p. 96; A. Rykała, *Mniejszości narodowe...*, p. 101.

<sup>60</sup> G. Baranowska, op. cit., p. 35.

<sup>61</sup> Judgment of the Appeal Court in Katowice of 24 September, 1997, I ACa 493/97, OSA 1998 no. 10, item 43.

<sup>62</sup> Judgment of the Supreme Court in Warszawa of 14 February 2007, III SK 20/06, OSNP 2008, no. 3–4 item 54.

nal of Human Rights which found no violation of the European Convention of Human Rights by the Polish authorities (in the case of Gorzelik & Others v. Poland)<sup>63</sup>.

The case law of Polish courts fails to provide a final decision and to resolve the question of formal, official recognition of the Silesian nationality. Scholars mention that the state authorities consider the national aspirations of Silesians as well as the activity of organizations that stimulate and promote the ideas of autonomy of Silesia a threat<sup>64</sup>. Despite being most numerous, the population that identifies with the Silesian nationality has not been recognized legally. It does not have any privileges of other, much less numerous, minorities.

On the other hand, Kashubians are an ethnic minority living in northern regions of Poland: Pomeranian province (districts: pucki, wejherowski, kartuski, lęborski, bytowski, kościerski, chojnicki), and West Pomeranian province (district słupski). For centuries, Kashubians remained trilingual. One can mention that after 1945, when the Kashubian-German borderland ceased to exist, they started to become bilingual (Kashubian-Polish bilingualism) or monolingual (Polish). Today the Kashubians are a diverse community in terms of language (they speak several dialects) and culture<sup>65</sup>. Scholars highlight that some organizations (as f.e. *Zrzeszenie Kaszubsko-Pomorskie*) emphasize the Polish-Kashubian identity, but the other strives to have Kashubians recognized as a nation and takes actions centred on creating a national Kashubian group identity<sup>66</sup>. Formally, the Kashubians – unlike a certain group of Silesians – do not seek autonomy.

On the 2002 Polish Census, the number of people declaring “Kashubian” as their only ethnicity was ca. 5,000, and there were 52,000 persons who declared Kashubian as the language they use at home. On the 2011 Polish Census, the number of people declaring “Kashubian” as their only ethnicity was 16,000, and there were 233,000 persons who declared Kashubian as first or second ethnicity (together with Polish). It is worth noting that over 108,000 (in 2011) people declared everyday use of the Kashubian language. One can highlight that the classification of Kashubian as a language or dialect has been very controversial. Kashubian (*kaszëbsczi jãzëk*) is a West Slavic language influenced by Polish, Low German and High German and belongs to the same language family as Polish and for a long time was perceived as a dialect of the Polish language or as “broken Polish”, which contributed to its low prestige<sup>67</sup>.

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<sup>63</sup> Case of Gorzelik & Others v. Poland, Judgement of December 20th 2001, appl. 44158/98, <https://hudoc.echr.coe.int/rus#%7B%22itemid%22:%5B%22001-60003%22%5D%7D> (access: 28.06.2021).

<sup>64</sup> A. Rykała, *Mniejszości narodowe...*, p. 99.

<sup>65</sup> M. Ratajczak, op. cit., p. 397.

<sup>66</sup> M. Mazurek, *Tożsamość kaszubska – dziś (i jutro?)*, “Studia Humanistyczne AGH” 2015, no. 13 (3), p. 132 ff.

<sup>67</sup> J. Olko, *From discouragement to self-empowerment. Insights from an ethnolinguistic vitality survey among the Kashubs in Poland*, “PLoS One” 2020, no. 15(8), doi: 10.1371/journal.

They have been more effective than the Silesians in securing themselves collective minority rights, which the right to speak the Kashubian language to administration authorities is the best proof. As mentioned, the Kashubian language has been recognized by the Act of 2005 as the only regional language in Poland<sup>68</sup> and has enjoyed legal protection as an official regional language. This legal act provides for its use in official contexts in municipalities in which speakers are at least 20% of the population. There is a rule that the number of citizens within a community, who belong to a minority, is calculated as the number of people speaking a regional language, which results from the latest Census.

Wymysorys, a language of Wilamowice residents was brought to Poland by the settlers from Western Europe and survived through the historical storms in the region till today<sup>69</sup>. Wilamowice is a small town in the Oświęcim Basin (*Kotlina Oświęcimska*), founded in the 13th century by settlers of Germanic origin<sup>70</sup>. The town itself has ca. 3000 inhabitants and is an executive centre for a municipality with a population of ca. 18,000, where indigenous Wilamowiceans constitute a numerical minority even at the lowest self-governmental unit, not exceeding 18%<sup>71</sup>. The language enclave originates from Colonial Middle High German. For nearly eight hundred years, they maintained their identity, language and dress, including through endogamy, to which they leaned because of a much higher property status than residents<sup>72</sup>. In 1945, Polish authorities prohibited the wearing of costumes and the use of the Wilamowicean language, and people who did not comply with this prohibition were severely punished<sup>73</sup>. Nowadays, the residents of Wilamowice fight to preserve their linguistic and cultural identity and try to attract the attention of Poland to themselves and their language.

For the first time, the Wysomyrys language and the regulation of its status were discussed at the conference “European and regional instruments for the protection of endangered languages”, which took place on November 5,

pone.0237395 (access: 28.04.2021); G. Gudaszewski *Struktura narodowo-etniczna, językowa i wyznaniowa ludności Polski. Narodowy Spis Powszechny Ludności i Mieszkań 2011*, Warszawa 2015, p. 29; A. Grabowska, P. Ladykowski, *The Change of the Kashubian Identity before Entering the EU*, “Baltic Journal of European Studies” 2002, no. 1, pp. 2–5.

<sup>68</sup> M. Ratajczak, op. cit., p. 397.

<sup>69</sup> M. Mętrak, *Wymysorys (Vilamovicean) and Halcnovian: historical and present-daysocio-linguistic situation of microlanguages in a southern-Polish language island*, [in:] L. Rezoničnik, N. Zavašnik, *Slovani od preloma 19. in 20. stoletja do danes. jezikovne, zgodovinsko-politične spremembe in književni doprinos*, Ljubljana 2019, p. 2 ff; T. Wicherkiewicz, T. Król, J. Olko, *Awaking the Language and Speakers' Community of Wymysiöeryś*, “European Review” 2017, no. 26, issue 1, p. 1.

<sup>70</sup> M. Mętrak, op. cit., pp. 2–3; T. Król, *Czym jest dla dzisiejszych Wilamowian język wila-mowski? Różne funkcje, różne postawy językowe?*, “Łódzkie Studia Etnograficzne” December 2016, pp. 243 ff; T. Wicherkiewicz, T. Król, J. Olko, *Awaking the Language*, op. cit., p. 2 ff.

<sup>71</sup> T. Wicherkiewicz, T. Król, J. Olko, op. cit., p. 2.

<sup>72</sup> T. Król, op. cit., p. 243 ff.

<sup>73</sup> Ibidem, p. 243; M. Mętrak, op. cit., p. 4.

2013, in the Polish Parliament. Before the Committee on National and Ethnic Minorities, the Wilamowiceans reported the problem of the lack of legal support for the Wysomyrys.

## Summary

In this description, I described the legal and factual actions done by Poland to manage the language problem of Silesians, Kashubians and residents of Wilamowice, Polish regional language minorities. Described language minorities in Poland are of unquestionable historical, cultural and political value. They are a testimony of the unique multicultural character of the country that has been shaped over centuries. However, shaping a strong regional identity – according to academics<sup>74</sup> – which was particularly true for the Silesians and Kashubians, was a social and cultural phenomenon. Nowadays, the Polish authorities face the problem of responding to the declaration of belonging to the Silesian nationality and adopting a position regarding the legal form of that group's subjectivity. This problem could be solved by amending the Act of 2005 to extend the group of ethnic minorities by the Silesians. Kashubians, on the other hand, demand the possibility of using the Kashubian language at the district level (powiat), which is a larger unit of the territorial subdivision of Poland than a municipal authority. The residents of Wilamowice would like to receive any support to ensure the development of their language. Despite the state's support of the minorities' culture development, there still is the risk of their extinction under the impact of the Polish nation and the global cultures. It could be mentioned that Poland has been facing the problem of the so-called 'minority regionalisation' coming down to the situation that the majority of the society is not fully aware of the core issue of minorities and the minority problems are confined to the local borders (within the so-called 'small home-lands' of their settlement)<sup>75</sup>.

It is worth noting that every year the Centre for Public Opinion Research – as experts mention<sup>76</sup> – examines the attitude of Poles towards other nations, attempting to determine their sympathies. The results show a gradual opening of Poles to other nationalities. Poles also accept the right of minorities to learn their language in public schools. However, the right to use minority language before administrative authorities and the right to place bilingual town (or village) signs with minority language arouses objection of more than half of Poles<sup>77</sup>.

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<sup>74</sup> A. Rykała, *Mniejszości narodowe...*, p. 89.

<sup>75</sup> W. Kundera, *op. cit.*, p. 140.

<sup>76</sup> B. Machul-Telus, *op. cit.*, pp. 48–49.

<sup>77</sup> *Ibidem*, p. 49.

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## Summary

### **The language problem of minorities in a homogeneous state. Comments on the example of the legal status of the Silesian, Kashubian and Wymysorys languages in Poland**

**Keywords:** national minority, ethnic minority, regional minority, the language of minorities.

In this paper, I aim at presenting the language situation of some regional minorities in Poland: Silesians (*Ślązacy*), Kashubians (*Kaszubi*) and the residents of Wilamowice. Protection of language minorities is extremely important from the point of view of cultural development of countries. Throughout a long period of its existence, Poland has been a multi-cultural country populated by representatives of different national, regional and ethnic groups. However, the national and ethnic situation of Poland changed radically after the Second World War. Today Poland is one of the most homogenous states not only in Europe but also worldwide. However, Poland is not free from the discussion about minority rights. Shaping a strong regional identity, which was particularly true for the Silesians and Kashubians and residents of Wilamowice, was a social and cultural phenomenon, completely unknown in the long history of Poland. The Act on national and ethnic minorities and on the regional languages dated January 6, 2005, allows to use of Kashubian language as a "supporting language" before the municipality authorities, the smallest ad-

ministrative unit. The other obvious point of this description concerns the demanding of similar linguistic rights by Silesians. The study also highlights the efforts of the residents of Wilamowice to preserve their unique language.

## Streszczenie

### **Problem języka mniejszości w homogenicznym państwie. Uwagi na przykładzie statusu prawnego języka śląskiego, kaszubskiego i wilamowskiego w Polsce**

**Słowa kluczowe:** mniejszość narodowa, mniejszość etniczna, mniejszość regionalna, język mniejszości.

W niniejszym artykule przedstawiono sytuację językową niektórych mniejszości językowych w Polsce: Ślązaków, Kaszubów oraz mieszkańców Wilamowic. Ochrona mniejszości językowych jest niezwykle ważna z punktu widzenia rozwoju kulturalnego krajów. Polska przez długi okres swojego istnienia była krajem wielokulturowym, zamieszkałym przez przedstawicieli różnych grup narodowościowych, regionalnych i etnicznych. Jednak sytuacja narodowa i etniczna Polski zmieniła się radykalnie po II wojnie światowej.

Dziś Polska jest jednym z najbardziej jednorodnych państw nie tylko w Europie, ale i na świecie. Nie jest jednak wolna od dyskusji o prawach mniejszości językowych. Kształtowanie silnej tożsamości regionalnej, co dotyczy zwłaszcza Ślązaków i Kaszubów oraz mieszkańców Wilamowic, stanowi bowiem zjawisko społeczne i kulturowe, dotąd nieznanne w długiej historii Polski. Ustawa o mniejszościach narodowych i etnicznych oraz o językach regionalnych z dnia 6 stycznia 2005 r. dopuszcza używanie języka kaszubskiego jako „języka pomocniczego” przed władzami gminy, najmniejszą jednostką administracyjną. Drugim ważnym punktem jest analiza prawna wysiłku Ślązaków w celu uzyskania podobnych praw językowych. W opracowaniu zwrócono też uwagę na starania mieszkańców Wilamowic, mające służyć zachowaniu ich unikalnego języka.