

Poland's Migration and Ethnic Policies:
European and German Influences

by

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One of the main characteristics of the systemic transformation in Poland after 1989 is a growing Western impact on her domestic and foreign policies. This book examines how Polish migration and ethnic policies are affected and shaped by the European integration process and by an assertion of German power. Chapter I provides several introductory remarks on Poland's "return to Europe". Chapter II deals with the Europeanization of Polish migration policy. Chapter III concentrates on implications of Poland's openness to the West for protection of ethnic minorities, with special regard to the German minority situation.

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Preface

One of the main characteristics of the systemic transformation in Poland after 1989 is a growing Western impact on her domestic and foreign policies. In recent years, I have done research on this topic within the framework of the international project on "The Influence of Germany and the European Union on the Smaller European States". Basic conclusions of my contribution to this endeavour are scheduled to appear in a volume to be edited by Prof. Peter Katzenstein of Cornell University, U.S.A. I am grateful to the sponsors of the project for financial support of my research.

This book examines, in much broader scope, how Polish migration and ethnic policies are affected and shaped by the European integration process and by an assertion of German power. Chapter I provides several introductory remarks on Poland's "return to Europe" which has been taking place since 1989. Chapters II and III deal with the Europeanization of Polish migration and ethnic policies respectively.

The preliminary, much shorter versions of these two case studies were presented at conferences held in Ithaca (February 1994) and Budapest (June 1995). The author would like to thank all the project participants for their critical comments on earlier drafts. He accepts, however, full responsibility for the views expressed in this book.

I am also highly indebted to the Netherlands Institute for Advanced Study in the Humanities and Social Sciences (NIAS), Wassenaar, for various facilities during my stay there as Mellon Research Fellow between September 1995 and January 1996. The bulk of research for this book was carried out while at NIAS and, given the pressures of work, I would certainly not have written it otherwise.

Wlodek Aniol

Wassenaar, January 1996

Chapter I

Poland's "Return to Europe": Motives, Barriers, and Implications

1. The rationale for reintegration with the West

From the close of World War II right up to 1989, Poland was politically, militarily and economically dependent on the Soviet Union. For almost half a century the Soviet domination of Poland deprived her of the opportunity to participate in the integration process taking place in Western Europe. A number of links that for centuries had bound the Poles with their Western partners were substantially weakened.

To some observers, the situation of Poland in the late 20th century resembles, in a sense, the basic dilemma faced by Prince Mieszko I, the founder of the Polish state, a thousand years ago. When around 960 the Prince was assuming power, he could opt either for supporting heathendom and unrealistic isolation or for acceptance of baptism and bringing Poland into the sphere of the European Christian civilization. Being baptized in 966 Mieszko I opted for the latter, although over the next few centuries Poland was still confronted with the problem of taking proper attitude towards the Papacy and the Empire.

The steady eastward expansion of the Germans confronted the Polish state with a powerful, dangerous, but at the same time civilizationally attractive neighbour. The relations with the Empire were eventually shaped on the principle of the recognition of its informal superiority. However, Poland's striving to counterbalance her dependence on the Empire was manifested by the alliance with the Czech state (Mieszko I married Czech Princess Dabrowka in 965), by the baptism, and by the act of putting the state under the papal protection around 990.¹

¹ See more on this: M. Tymowski, *Outline of History of the Polish State*, Polish Information Agency, Warsaw 1992, pp. 1-2.

The democratic revolution of 1989 created opportunities to re-establish Polish traditional links with the West and to join in the main stream of European integration. Poland wants to be included in the network of West European and North Atlantic interdependencies. Anchoring the country in this system is a question of key importance. At present, Poland is not a target of conquest; she is no longer facing the menace of becoming a satellite state yet again. However, to remain on the economic periphery of the West, in a sort of security "grey zone", would probably keep Poland locked in a new structure of dependence, albeit a qualitatively different one.²

Poland's "return to Europe" clearly has political, economic, and social, as well as security elements. Enhanced co-operation with West European and trans-Atlantic partners and institutions (the European Union, WEU, NATO, the Council of Europe) is to serve the following three main purposes:

- (1) to increase the sense of security, particularly when Central and Eastern Europe faces new tensions and conflicts;
- (2) to enable the Poles to overcome a development and technological gap which separates them from the West;
- (3) to anchor and keep Poland on her road to democracy, the rule of law and a market economy.

2. Security concerns and priorities

The first priority of Polish foreign policy is to maintain and intensify the process of Poland's integration into the main Western structures.³ The linkage and interplay between various aspects of this integration and its great importance for national security are worth emphasizing.

For example, Poland's relationship with the EU, although it does involve many economic and social problems, must be seen above all as a political issue. Links with the Union give support to her external security and democratic transformation. On the other hand, economic recovery and

² R. Kuzniar, "The Geostrategic Factors Conditioning Poland's Security", *The Polish Quarterly of International Affairs*, Winter 1993, vol. 2, No. 1, p. 19.

³ See, for example, "Statement by Mr. K. Skubiszewski, Minister for Foreign Affairs of the Republic of Poland, on Poland's foreign policy in 1993 to the Diet of the Republic of Poland, Warsaw, 29 April 1993", *Materials and Documents* 1993, vol. 2, No. 5, p. 131.

social stability in Poland is very much dependent not only upon economic aid and technical support from the West, but also on the fashioning of an adequate security arrangement with such structures as NATO and WEU.⁴

The significance of Poland's participation in NATO would not be limited to the fact that this is a defensive alliance which constitutes an effective system of collective security. From Polish perspective, NATO is also the principal institution that cements together the Western world. Therefore, Poland's membership in the Alliance would be the final confirmation of the irreversible nature of the country's incorporation into the system of Western states. As such, it would facilitate the process of political and economic transformation.⁵

In Poland's opinion, many insecurities in Europe may be lessened by extending Western structures' membership and by speeding up the process of pan-European integration. Any rejection of the newly democratic East by the stable and prosperous West can only aggravate the problems. Since the concept of the "cordon sanitaire" seems unrealistic in the modern world, all the present and future ailments of post-Communist societies could easily flow westward. Insecurity in Eastern Europe cannot but lead to insecurity in Western Europe.

In particular, one of the most dramatic and quite real consequences of an aggravated situation in the East is a great wave of uncontrolled migrations. A large number of economic, ethnic and political refugees fleeing westward from the East, possibly through Poland, could be a product of various sources of destabilization. For instance, it is highly probable that if Western capital does not go to the East, Eastern migrant workers will come to the West. If ethnic tensions rise, the old border disputes revive and democracy fails in the East, it will be again the West where political refugees will escape to.

Thus, from Polish perspective, the main current challenges to European security are mostly of internal and non-military nature. This includes such threats as the resurgent nationalism and mistreatment of ethnic minorities, possible massive flows of refugees and involuntary migrants, economic and political destabilization in the post-Communist countries, etc. Therefore, the main conceptions of security developed in Poland tend to define it more

⁴ In accordance with "The principles of Polish security policy and the defense strategy of the Republic of Poland", issued by the National Defence Council on 2 November 1992, the main strategic external objectives of this policy are economic and political integration with the European Community and membership of NATO.

⁵ More on this, see H. Suchocka, "Poland's European Perspective", *NATO Review*, June 1993, vol. 41, No. 3.

broadly than in military-strategic terms. While putting stress on the interaction between internal and external matters, they perceive European integration as the key to both regional and Polish stability and security.

3. Raised expectations versus reality

However, a more active Western participation in Central and Eastern Europe, including Poland, is still uncertain. The West is distrustful towards the East, mostly because of the lack of stability in the region. The point is that the creation of Eastern stability seems to be impossible without Western help and deeper Western involvement. This resembles a typical "vicious circle", a "catch-22" situation.

It is also unsure what the final results of a greater Western engagement in Central and Eastern Europe would be. At least two general scenarios are possible: (a) fewer disproportions and more partnership between both parts of Europe; or on the contrary, (b) a return to the pre-war, quasi-colonial economic dependency and a division into Europe "A" and "B", roughly speaking along the Gdansk-Triest line.

In practice, the process of getting Poland included into West European and trans-Atlantic integration structures and interdependencies has turned out to be more complex and slower than it was expected. A number of structural, mental, financial, and political barriers have been hampering any close and quick reintegration.

During the first period of internal and external transformation, many people in Poland were disappointed. Much of the optimism of 1989 and early 1990 gave away to pessimism. Many hopes turned sour. Disillusionment of significant segments of the population was growing, as they were suffering the high cost of the transition. This social mood contributed to the defeat of post-Solidarity political parties in the parliamentary elections of September 1993.

Idealized expectations as regards fast and smooth integration with Western Europe have not been fulfilled. The Poles expected, perhaps a little naively, much more from the West. As the former foreign minister of Poland's leftist coalition government, Andrzej Olechowski, put it briefly in his first interview since taking office in autumn 1993: "When the Poles initiated the collapse of the communist system, we were quite confident

that we would be quickly integrated within the Western orbit (...) But the only structural change in this sense that occurred in Europe was German unification. Somehow, the West remained where it was and the East remained where it was."⁶

Polish disillusionment with the West was quite often expressed by the former President Lech Walesa. For example, in his bitter speech given at the Council of Europe's Parliamentary Assembly in February 1992, he said: "We have made a revolution, you have done business". "You were the ones to profit from the Polish revolution," he complained in Strasbourg.⁷

Public opinion polls show that a fair number of Poles treat closer links with Western Europe as an additional reason for worry, if not frustration. According to them, the West has been saying one thing but doing another. The long living legend of the West, which was expected to give credit in return for bringing down communism, is dying along with the erosion of faith in its goodwill. Is this what will follow a tendency to turn away from an "ungrateful" West?

4. The "German factor"

For more than a millenium Poles and Germans have been neighbours. The history of Polish-German relations contains dark chapters: the allegedly eternal "Drang nach Osten" (estward drive), the invasions by the Teutonic Order in the 14th-15th centuries, three partitions of Poland toward the end of the 18th century, much to the profit of Prussia, the horrible German occupation during World War II. But, at the same time, it is full of brighter moments. Since the Middle Ages a number of intellectual trends, including Catholic theology, the ideas of Reformation, Enlightenment and Humanism, advanced eastward through the medium of German language. Waves of German settlers brought to Poland legal patterns, merchant capital and modern technologies.

Nowadays, the most direct route for Poland to the European Union and NATO leads through Germany. It is not only a matter of geographical proximity, but also of the necessary economic, political and social links.

⁶ Newsweek, 22 November 1993, p. 60.

⁷ The Warsaw Voice, 16 February 1992, p. 6.

Expansive dynamism of the German economic powerhouse could well prove the most important factor in drawing Poland into the process of West European integration, while also stimulating economic growth and modernization.

In comparison with other countries, Germany is the strongest supporter of Poland's entry into Western structures. She would like to move the eastern borders of the EU and NATO farther eastward -- unless this isolates Russia. Because of her potential and geographical location, Germany has very much say in this matter.

However, Germany's role as a great power may assume various forms and take different directions. Central Europe is frequently considered to be a traditional zone of German influence. While Russia has lost control of events in this region, the Germans are expected to fill the economic and political vacuum. Some argue that the united Germany will be seeking some reconstruction of the "Mitteleuropa" concept.⁸ The role for Poland of being an economic hinterland is also possible, with all the political consequences that this would entail.

Therefore, of vital importance are the questions: How to avoid any negative implications of Germany's great power status? How to avert the dangers stemming from the enormous disproportion in the two countries' relative potentials? How to escape the old Mitteleuropa pattern? How to create a dam lest Central Europe be again hurled into semi-colonial or peripheral dependence?

Germany's membership in the European Union and NATO is extremely important from this point of view. What is more, a better functioning EU, with stronger institutions to which member states transfer more and not less power, seems to lie in the best interest of Poland. This flows from the fact that a loose system of intergovernmental co-operation (confederal structure in contrast to the federal one) bears the danger of domination by the strongest and remains subject to power policy in which "some are more equal and more sovereign than others".⁹ On the contrary, a tight Maastricht-style EU, although more difficult for Poland to qualify for membership, would safely anchor the united Germany to a boader European unit.

⁸ J. Rupnik, "Central Europe or Mitteleuropa?", *Daedalus*, Winter 1990, vol. 119, No. 1.

⁹ F. Kinsky, *Germany's European Policy and Impact on Central Europe. Paper presented at the CEU Conference on "Germany in the Central-East European Crisis Zone"*, Stirin, 19-22 September 1993, pp. 6-7.

Public opinion polls conducted in Poland in 1990 showed the predominance of negative German stereotypes, but at the same time the willingness to develop relations with the Federal Republic of Germany.¹⁰ In time, however, the Poles began to look more anxiously westward. In particular, the number of opponents of Western economic activity in the country increased.¹¹ Anxiety concerning German investments in Poland is reflected in the stereotyped view that "the Germans will buy us up".

5. "Europeans" versus "nationalists"

Against the background of the above described tendencies, two opposite attitudes towards Western Europe have been developing in Poland in recent years.

The first one is promoted by "Europeans", liberal "cosmopolitans" or "internationalists", who constantly support the slogan of a "return to Europe". They share the desire to catch up with the economically efficient and secular Europe as soon as possible. They treat Germany as a bridge between the West and Poland, as a force pulling the country westward.

On the other hand, there are "isolationists", "true Poles" or "nationalists", who treat closer links with a uniting Europe as a threat. They fear a limitation of Poland's sovereignty, political, economic and cultural dependence on the West, in particular on Germany, and the loss of the Catholic Church's influence among the population.

This differentiation, although quite significant, is not yet decisive in Polish politics. The main political divisions which have been the base for creating subsequent coalition governments after 1989 go along other lines and criteria. A Solidarity background on the one hand and a Communist past on the other constitute much more important factors which still decide possible political alliances in Poland.

The present Polish government, like the former ones, is generally in favour of strengthening various links with the West and its economic and political structures. The strategic pro-European and Atlantic option of Polish foreign policy has not been questioned so far. All major political parties insist that Poland must soon join NATO and the European Union. However, there is no lack of suspicions, concerns and caution, particularly as regards economic relations with the European Union. Some politicians would like to revise the Europe Association Agreement of 1991.¹²

In the present left-centrist coalition, ruling since September 1993, this approach is taken by the representatives of the Polish Peasant Party (PSL), rather than by those of the post-Communist Democratic Left Alliance (SLD), while in the former centre-rightist government it was the politicians of the Christian National Union (ZChN) - and not of the Democratic Union (UD) - who expressed their reluctant attitude towards the West in general and Germany in particular.

For example, the ZChN deputies did not want to accept the Polish-German Treaty of 1991 without reservation, arguing that (a) the formal acknowledgement of the existence of the German minority in Poland has no parallel of the acknowledgement of the Polish minority in Germany; (b) the possibility of Germans returning to the former German territories, included in the Letter of Intentions to the Treaty, may lead to an organized activity of depolonization of these territories; (c) the question of German compensation for war damages is not included in the Treaty.¹³

A political struggle concerning the question whether the Poles are going to be open or closed, or whether Poland is to be a European country or a provincial one, became more apparent during the last presidential elections of November 1995. Although most candidates running for the presidency were firmly in favour of joining NATO and the European Union, some of them expressed doubts about Poland's moves to join the West. One could hear voices warning against a kind of blind acceptance of Europe that allegedly conflicts with Polish national interests. Alarms were

¹⁰ A. Kloskowska, "Neighbourhood Cultures: Some Aspects of Difficult Historical Neighbourhoods", *International Sociology*, vol. 7, No. 1, March 1992.

¹¹ For example, in February 1992, 37% of those surveyed in a public opinion poll opposed foreign investment. It meant that opposition has grown from 30% in November and 24% in September 1991. Disapproval of foreign projects in Poland is expressed primarily by old people who are poor and not well educated. More details on this poll conducted by the Pentor Institute, a Polish-American independent center for opinion research, see *The Warsaw Voice*, 1 March 1992, p. 4.

¹² In May 1991, during the Sejm debate on association with the European Community, voices were heard saying this would limit Poland's newly-won independence, risk a buy-out of her national treasury, and introduce liberal perversions into the country.

¹³ See the statement made in Sejm by Marek Jurek, a leader of the right-wing ZChN, during the ratification debate on the Treaty of Good Neighbourly Relations and Friendly Co-operation between Poland and Germany in December 1991. The same deputy had said openly: "Today, national independence means the right to remain where you are standing, without following the world, and even the right to move in the opposite direction" (*The Warsaw Voice*, 16 February 1992, p. 8).

raised as to the economic implications of integration with the EU, especially for Polish agricultural policy, etc.¹⁴

The results of the second round of the elections showed Polish society to be split down the middle. While a traditionalist, Catholic, rural Poland (mostly the south and east) voted for Lech Walesa, an outwardlooking, modernizing and entrepreneurial country (the north and west -- what is interesting, the most Germanized parts of Poland) backed Alexander Kwasniewski, who eventually won the elections by a small margin.

It seems that the divide revealed then has much to do with social divisions and different public attitudes towards Poland's "return to Europe". Opinion polls especially point out that, in the process of integration, Poland should not be merely "absorbed", but needs to retain her specific national identity.¹⁵ The differentiation of "Europeans" from "nationalists" may be a point of departure to two case studies, which will examine in more detail various implications of Poland's openness to the West in the following areas: (1) migration policy; (2) protection of ethnic minorities, with special regard to the German minority situation.

¹⁴ See A. Szczypiorski, "Straszenie Europa" [Europe as Bogeyman], *Polityka*, 23 September 1995.

¹⁵ In a public opinion poll conducted by Pentor in late 1991 the Poles were asked whether Poland would gain or lose economically on joining the EC. The answers were: gain - 15%; gain more than lose - 52%; lose more than gain - 16%; lose - 2%; hard to say - 15% (see *The Warsaw Voice*, 12 January 1992, p. 5). At the same time, 52% of the population believed Poland should move towards a Christian-national model, while 47% supported a West European model. This means that the majority of the society did not accept the exertive march towards a Western model of public life (*Ibidem*, p. 8).

In October 1995, 84% of the Poles declared their support for joining the European Union, and more than three-fourths of the population backed Poland's membership in NATO. At the same time, as many as 62% of people did not agree with the opinion that "Poland should join Europe and accept the way of life existing there, even at the expense of her own tradition" (see *Rzeczpospolita*, 25 October 1995, p. 5).

Chapter II

The Europeanization of Polish Migration Policy

Introduction

Polish migration policy can be perceived as an important element of Poland's integration strategy towards Western Europe. There are at least two arguments for such reasoning.

First, mobility of Polish society, journeys of Polish citizens abroad in search of employment (but also, still limited in terms of numbers but becoming more and more frequent, stays of highly qualified Western experts in Poland) can be treated as an important instrument of fastening the manifold relations linking Poland with Western Europe. Experience gained thanks to these migration flows -- established contacts, broadened knowledge, upgraded skills -- can facilitate to great extent Poland's march towards full membership in the European Union.

Second, Poland's aspiration for membership in the European Union needs to be followed up by the compatible legal and administrative regulations also in the field of broadly understood migration policy. Even if, for economic or technical reasons, immediate transplantation to Polish ground of all relevant international norms is not possible, it is very important that the general direction of the new regulations introduced in Poland is coherent with the European standards regarding the movements of people, border control, and legal status of aliens, including migrant workers and refugees, etc.

It is the more so because for many years West European countries make efforts to coordinate and harmonize national regulations and policies on migration, particularly within the Schengen Group. Solutions introduced in Poland should therefore become more and more similar to those agreed upon by the Western countries. The process of Europeanization of Poland's migration policy is already under way. Considerable repercussions for

Poland, caused by the latest changes in European and German migration regimes, are a good example of these influences.

1. The security dimension of migrations

Contemporary migration is a typical transnational phenomenon. It is not only an internal concern, it is intertwined with transnational politics. Domestic immigration laws and policies have unavoidable external implications. To study the present movements of people in Europe, a broad conception of the nature of international relations must be taken into account, not limited merely to diplomatic dealings or traditional state-to-state interactions.¹

The European migration challenges have their increasingly important security dimensions. Total annual immigration to Western Europe was rapidly growing in the late 1980s and early 1990s. Whereas in 1985 it could be estimated to be at the level of one million, it was about 2,7 million in 1992. Moreover, the share of irregular (uncontrolled) movements as a proportion of total annual flows increased from 20% in 1985 to 40% in 1992.²

Abuse of the right of asylum has increasingly become the main way for economic migrants to enter and legally reside in European countries. The total number

of asylum seekers in Western Europe was more than cut in half from 693,000 in 1992 to 315,000 in 1994. However, the number of refugees, displaced persons and others that have fled from areas of armed conflict has increased considerably throughout Europe. To a large extent, they are from the successor states of Yugoslavia. In 1994, the number of such people remaining in the successor states was 3.5 million, while a total of about 600,000 citizens from these states have been granted temporary protection in other European countries.³

¹ See, for example, C. Mitchell, "International Migration, International Relations and Foreign Policy", *International Migration Review*, vol. 23, No. 3, Fall 1989, p. 682.

² J. Widgren, *The Need for a New Multilateral Order to Prevent Mass Movements from Becoming a Security Threat in Europe. Paper prepared for the Conference organized by the Center for Strategic and International Studies*, Taormina, 1-3 April 1993, p. 3.

³ See *International Migration Bulletin*, No. 6, United Nations/ECE, Geneva, May 1995, pp. 2-5.

Disorganized and disorderly large-scale migration causes numerous and diverse problems both for the receiving countries and the countries of origin, as well as for the transit states and the persons participating in such migration. These movements generate many dangerous social, economic and political tensions and instabilities. Therefore, they should be viewed from the perspective of broadly understood European security.

Poland's security policy increasingly takes the migration factor into account. The growing number of foreigners coming into the country is already accompanied by many-sided problems, including a growth of transgressions of Polish law committed by aliens. Special fears arise from the threat of bringing in organized forms of delinquency: weapon and radioactive materials trade, drug trafficking, mafia dealing with car theft and laundering of "dirty money", etc.

So far, however, the fear of crime associated with the influx of foreign visitors appears to have been exaggerated and unjustified. In the years 1991-1994, the number of foreigners arrested or serving time in Polish prisons remained at around 1,100, which is less than 0.5% of the total prison population. In March 1994, of the 1,076 foreigners held in Polish jails, 950 were temporarily detained and only 114 were sentenced to serve terms in prison; most of them were from Ukraine (459), Russia (168), Belarus (157), and Germany (53).⁴

On the other hand, there is a fast growth of foreigners working illegally in Poland. Considerable number of "tourists" from the former Soviet Union -- primarily Ukrainians, Belarussians, and Russians -- are illegally employed in the construction industry, agriculture, and many other mostly manual occupations for very low wages. Some estimates indicate that even some 200,000 aliens from the East work in Poland without any permits.⁵

The number of those caught at attempts of illegally crossing Polish borders, especially the western border with Germany, still remains relatively high. In 1992 the Polish Border Guard detained for this reason a total of 33,581 people (13,589 in 1991). Most of them were citizens of Romania (23,401) and Bulgaria (6,395). The vast majority wanted to cross the western border (30,387).⁶ The number of those trying to do it illegally

⁴ See Rzeczpospolita, 21 April 1994.

⁵ See J.B. de Weydenthal, "Immigration into Poland", *RFE/RI Research Report*, vol. 3, No. 24, 17 June 1994, p. 40.

⁶ *Recent Developments in Policies Relating to Migrations and Migrants. Papers submitted by the members of the European Committee on Migration (CDMG) of the Council of Europe*, Strasbourg, 1 September 1993, p. 47.

in 1993 was lower -- some 18,200. These included about 7,000 Romanians, 1,600 Bulgarians, 1,400 Ukrainians, and 1,000 Russians.⁷

The still growing number of people from the East and South treat Poland mostly as a transit country enabling them getting to Germany or Scandinavian countries. However, in the case of blocking legal channels of emigration to the rich Western countries, and the growing destabilization in Eastern Europe and in the Balkans, Poland can easily change into a destination country. For many foreigners, Poland has already changed its meaning from a transit to the target country. This is due to gradual tightening of West European regulations concerning entry and stay, as well as increasing xenophobia and intolerance towards aliens.

The increasing wave of irregular immigrants may become a threat to public security and social stability, promoting criminality and clandestine employment. The Poles particularly look anxiously eastward. Poland seems to be especially attractive to inhabitants of the former Soviet Union because of the following factors:

- the central location in Europe and a long Eastern border (1,244 km), which is rather symbolically protected on the Polish side (it is also important that Poland has borders with as many as four post-Soviet republics);

- relatively frequent visits to Poland by citizens of the former USSR and thus a relatively good knowledge of local conditions and, besides that, cultural proximity, similar language, etc., which to great degree facilitate adaptation to the new surrounding for potential emigrants;

- the residence in former USSR territory of a more-than-two-million-strong Polish minority, which during growing crisis situations could emigrate in hope of preferential treatment in Poland;

- liberal entry regulations: for ninety-day visits, citizens of the former Soviet republics do not need visas, and the only document they have to present is an invitation, which is easily accessible.

If political and economic reforms in the former Soviet Union fail, the region will slip into anarchy and chaos. Potential instability, ethnic and religious conflicts, nationalist clashes, poverty and politically chaotic situations might trigger an "explosion" of refugees. The situation might be

⁷ These are the figures provided by the Ministry of Internal Affairs and reported by the Polish Press Agency (PAP) on 10 February 1994.

analogous to that of 1917, when thousands of refugees fled west through Poland trying to escape the turmoil of the Bolshevik Revolution.

But even if the reforms succeed, it will mean thousands of factories closed down and millions out of work. Increased unemployment, inequality of incomes and poverty -- being unavoidable short-term effects of marketization and privatization -- may foster individual searches for better opportunities abroad. Massive and uncontrolled migrations from the former USSR might destabilize the labour market and exacerbate social tensions in Poland.⁸

2. Elements of a new European migration regime

The term "immigration regime" is used with reference to "the attempt by receiving societies (sometimes with the cooperation of sending societies) to institutionalize, regulate, and generally manage movements of people across state boundaries by setting numerical, procedural, and qualitative terms and conditions for a foreigner's entry and stay in that society".⁹ Developing immigration regimes, which encompass also asylum regulations and policies, allows a government to choose whom to select and under what circumstances, and conversely, whom to keep out.

The following four basic national immigration policy regimes have been developed in Western Europe:

- (1) the semi-peripheral or Mediterranean (Greece, Portugal, Ireland, Spain and Italy), with emigratory histories and no immigration infrastructure;

- (2) the Scandinavian, exhibiting the most liberal policies;

- (3) the United Kingdom, which in the 1980s has shifted away from its previous liberal policies;

- (4) the Continental or Schengen, encompassing the traditional labour-importing industrialized countries, which attempt to maintain strict control over immigration.¹⁰

⁸ See W. Aniol, "Poland: From Emigration to Immigration?", *Refugees*, No. 76, June 1990.

⁹ D.G. Papademetriou, *At the Precipice? Some Thoughts About Where Europe Is With Regard to Migration, How It Got There, And What It Might Do About It*, Paper prepared for the Conference organized by the Center for Strategic and International Studies, Taormina, 1-3 April, 1993, p. 3.

¹⁰ These types of immigration policy regimes were identified by M. Baldwin-Edwards in: "Immigration After 1992", *Policy and Politics*, Special Edition, July 1991; "The Socio-Political Rights of Migrants in the European Community", in G. Room (ed.), *Towards a European Welfare State?*, Bristol 1991.

Of these the latter has the most transnational character and influences to a large extent immigration regimes in other European countries, including Poland. It can be claimed that it is the main basis for a pan-European migration regime, which has been emerging in recent years. Shaping such a system is well advanced, although it is doubtful whether interstate behaviour patterns dealing with migration in Europe have already reached the level of a coherent "international regime" in the sense proposed by S.D. Krasner.¹¹

2.1. Evolving national regimes: general tendencies

In the late 1970s, most West European countries stabilized their foreign populations through such measures as inducements to promote voluntary departures of guest-workers and programmes for family reunification for those migrants wishing to prolong their stays. Since the mid-1980s, however, these stabilization policies have been jeopardized by skyrocketing numbers of refugees and asylum seekers. This has led to the consideration of further possibilities to restrict immigration.

Today, one can observe clear indications of a strong trend towards more restrictive policies on immigration and asylum, and towards stricter border controls against all forms of illegal immigration all over Europe. A majority of governments wish to reduce or to halt the flow of permanent immigrants. All European Union countries impose fairly strong restrictions on immigration from outside the Union.

The policy for granting temporary work permits to non-Union citizens is a good example of this restrictive trend. These permits are granted solely on the basis of the specific needs of the employment market in a particular Union country. It is supposed that non-Union workers will return to their own countries when their permits expire.

Visas and quotas are the instruments employed. Many governments adopt policies to encourage repatriation. Most of them are concerned with halting illegal immigration. A number of countries have severely curtailed asylum. A wide range of unilateral measures to prevent or deter the arrival of new asylum seekers have been introduced.¹²

¹¹ S.D. Krasner defines international regimes as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations". See S.D. Krasner (ed.), *International Regimes*, Ithaca 1983, p. 2.

¹² See A. Kuijsten, "International Migration in Europe: Patterns and Implications for Receiving Countries", in M. Macura, D. Coleman (eds.), *International Migration: Regional Processes and Responses*, Economic Studies No. 7, United Nations, New York-Geneva 1994, p. 34-35.

Many new asylum laws include restrictions on initial access to the state's territory. Some states require valid travel documents (e.g. an international passport), some additionally a valid visa for asylum seekers, even to be able to lodge an application for asylum. Thus, people in urgent need of protection run the risk of being refused entry at the border, or being refoiled for the lack of documents, which is in clear contradiction with the principle of non-refoulement embodied in the 1951 Geneva Convention.

Many European states impose sanctions on airlines that admit asylum seekers lacking proper documents. This means that some of them might already be barred from even boarding a plane out of their home country. Additionally, the waiting at ports of entry for a decision on the admissibility of an asylum request has led to alarming situations at many European ports.¹³

There is also a strong inclination to shorten the period (e.g. to one month) of processing of applications for asylum. During that time a decision is made on whether the application is "manifestly founded" -- which means that the applicant has a fair chance of gaining asylum -- or "manifestly unfounded". For the latter, there is growing support for applying the new concept of "safe countries" to speed up processing (already introduced in Switzerland, Germany, the Netherlands, among others). Requests from persons coming from "safe countries" are examined under simplified procedures, as opposed to the common procedures that are applied in respect to persons coming from other countries, or their asylum claims are not examined at all.

The paradigm of safe countries is essentially restrictive.¹⁴

Its aim is to exclude applicants for asylum from consideration if they are nationals of countries appearing in the safe countries list. These lists can be highly questionable. Their compilation is judged as a very worrisome development by many human rights organizations that work in the asylum field.¹⁵

¹³ On new developments concerning asylum procedures, see *Report on the Right of Asylum. (Rapporteur: Mr Franck)*, Doc. 7052, Parliamentary Assembly, Council of Europe, Strasbourg, 23 March 1994.

¹⁴ More on this paradigm, see K. Hailbronner, *The Concept of "Safe Country" and Expedient Asylum Procedures: A Western European Perspective*, University of Konstanz (manuscript).

¹⁵ Europe: *Harmonization of Asylum Policy: Accelerated Procedures for "Manifestly Unfounded" Asylum Claims and the "Safe Country" Concept*, Amnesty International, Brussels, November 1992; *Refugee Protection at Risk: Amnesty International's Recommendations to the 44th Session of the Executive Committee of UNHCR*, Amnesty International, London, September 1993.

The safe country may be a third country in which asylum seekers have already found (or are supposed to find) protection and which they have left in search of better living conditions, or for other purposes not related to the reasons mentioned in the 1951 Geneva Convention. The concept of "safe country of origin", on the other hand, is a legal instrument to exclude asylum applications from nationals of those countries that are generally considered as being safe countries, in the sense that neither the asylum seeker nor the group he belongs to is in danger of persecution.

The label "safe country" carries then a sort of presumption. Such a presumption may deprive the interested person from having a fair chance of putting forward his case. Besides, by this concept the notion of the treatment of refugees as groups, not as individuals, is being reintroduced. Meanwhile, according to the UN Convention on the Status of Refugees of 1951, individual persecution has to be demonstrated to qualify for refugee status.

At the same time, those considered are mostly only such applicants who satisfy the narrowest interpretation of the Geneva Convention definition, i.e. justifying well-founded fear of persecution on grounds of nationality, race, religion, political opinion or belonging to a particular social group. All other asylum-seekers who would be entitled to protection using other international instruments (e.g. victims of civil wars who fail to suffer individual persecution) are excluded from the procedure. Yet several of the European countries grant some form of status and residence to such "humanitarian" refugees.

The integration of foreigners with the right to normal stay permits vary from one country to another. As a matter of fact, all European states support policies which encourage integration, but through a bewildering variety of processes and vocabularies. It is possible to combine two dimensions in a twofold classification according to the integration policy objective: assimilationist (Germany and France) versus pluralist (Britain and the Netherlands), and the policy instrument chosen: administrative (Germany and Britain) or welfare (France and the Netherlands).

Among the various approaches to the acquisition of nationality, there are traditional ones, such as the ethnic approach, based on birthright (Germany), which seems to create more problems than the civil approach, based on residency (France). One can also differentiate between the collective approach for minorities (Britain) and that of individual integration (France).

As part of integration policy, most European countries have eased their nationality legislation in the last few decades, usually to enable citizenship to be transmitted at birth to children born in the country, and sometimes retrospectively. Many now accept that such naturalized immigrants will have dual citizenship, a notion which most European states had previously opposed in several international conventions, as leading to impossible contradictions of loyalty and commitments.

Dual nationality is often seen as an obstacle to integration, although propensity to naturalize increases when it is permitted. Germany, Switzerland, the Netherlands and Belgium oppose dual nationality although many of their residents have it. The increase is due to immigration, to changes of rules, especially allowing descent of nationality from each parent. France, Sweden and Britain are more liberal about it.

Sweden shows the highest rate of naturalization, followed by the unofficial estimates for France. Germany and Belgium are among the lowest; the high German registration figure is mostly of persons of German origin. According to Art. 116 of the German Basic Law of 1949, ethnic Germans living even outside the boundaries of the FRG can transmit citizenship.

According to many politicians, there is reciprocal action between restrictive immigration policy and a successful integration policy: integration can only be achieved on condition that a new wave of immigrants is averted. However, this conditional link between the integration of second and third generation immigrants and a policy in favour of new immigrants is doubtful.

2.2. The West European immigration system

A. The European Union (EU)

The free movement of people goes hand in hand with the creation of an internal market within the EU. The abolition of EU internal borders necessitates the establishment of a system of joint external borders, as well as of harmonization of visa, entry and readmission policies.¹⁶

¹⁶ See, for example, G. Callovi, *Regulation of Immigration in 1993: Pieces of the European Community Jig-Saw Puzzle. Paper prepared for the Conference on "The New Europe and International Migration"*, Turin, 25-27 November 1991.

In 1987, the European Community Ministers of Immigration established a special inter-governmental organizational framework to deal with these issues. They are assisted by the ad hoc Immigration Group, whose activities are prepared by various sub-groups (on asylum, external frontiers, forged documents, admission/removal, information exchange, etc.).

Two conventions have been prepared by the so-called Trevi Group. The first one is the Dublin Convention of 1990 "Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the EC". Setting down rules for deciding which country should deal with an asylum request, it primarily aims to ensure that an application is not submitted in several member states at the same time. However, it does not specify substantive criteria for granting asylum.

The second instrument is a Convention on the "Crossing of External Frontiers of Member States" (the so-called Rome Convention). Although it appears to have been more or less agreed, a bilateral problem regarding its territorial application (a dispute between Spain and Britain over how to treat Gibraltar) is holding up the signature.

By the Maastricht Treaty of 1992, the EC will decide on the list of countries from which visitors will need visas to enter the Community. Decisions will for now require unanimity, but in an "emergency" the Council may vote by qualified majority, which after 1996 will be the rule. Under the Treaty, Member States are also committed to common policies on how to deal with asylum requests.

The Treaty defines three areas of competence, called pillars, of the established European Union. The first pillar on Community matters includes the determination of third country nationals needing a visa and the adoption of a uniform format for visas, for which the Commission has a right of initiative and the Parliament, that of being consulted. The second pillar on Common Foreign and Security Policy does not mention immigration and asylum issues specifically, but those are likely to be broached under its auspices.

The third pillar deals with Justice and Home Affairs and devotes a good deal of attention to immigration and asylum issues. There is a possibility of transferring some questions from the third to the first pillar, i.e. under Community competence, through a system of "passarelle" (K9). Asylum issues occupy a privileged position in the passarelle as the separate declaration on asylum contained in the Treaty stipulates that questions

related to asylum policies will be a priority for a transfer to Community matters.

The Maastricht decisions have already resulted in a considerable reinforcement of the EU inter-governmental cooperation on asylum and immigration issues. An EC Center for "information discussion and exchange on asylum" (CIREA) has been established, and a similar Center (CIREFI) for border control and immigration issues is under establishment, within the structure of the Council of Ministers.

The European Council, meeting at Edinburgh in December 1992, adopted the Declaration on Principles of Governing External Aspects of Migration Policy. It agreed that the approach of the Community and its member states should be guided and informed, among others, by the following principles:

- they should encourage displaced people to stay in the nearest safe area of their homes;
- they will reinforce their common endeavours to combat illegal immigration;
- where appropriate, they will work for bilateral and multilateral agreements with countries of origin or transit to ensure that illegal immigrants can be returned to their home countries;
- in their relations with third countries, they will take into account those countries' practice in readmitting their own nationals when expelled from the territories of the member states;
- they will increase their cooperation in response to the particular challenge of persons fleeing from armed conflict and persecution in former Yugoslavia.¹⁷

In February 1994, the European Commission issued the third Communication on immigration and asylum policies (the first and second, on the right of asylum and immigration respectively, were issued in October 1991). It calls for action in three main areas: in treating the causes of migration pressure, in controlling migration flows, and in improving the integration of legal migrants into their host countries. The report argues that immigration and asylum policies must be basic components of the European Union's relations with external states, that such matters must be "fully integrated into the Union's external policies."¹⁸

¹⁷ See *Conclusions of the Presidency, Annex 5 to Part A*, Edinburgh, 12 December 1992.

¹⁸ *Communication from the Commission to the Council and the European Parliament*, Brussels, 23 February 1994. See also *International Migration Bulletin*, No. 4, United Nations/ECE, Geneva, May 1994, p. 13.

Future EU cooperation in the field of immigration and asylum will probably include:

- harmonization of EU standards and practices on processing asylum cases. An asylum convention could elaborate consistent procedural rights, and the rights to remain until the case is heard and to independent hearings, thus avoiding major problems associated with the Dublin Convention;
- agreeing conventions on "safe third countries" and "safe countries of origin";
- a rapid system of extradition between member states;
- given the link between organized crime, drugs trafficking and the smuggling of illegal immigrants, there must be increasing cooperation both within the EU and between the EU, transit countries and countries of origin;
- Europol will probably become more than a provider for the exchange of information. In any case, a more secure information system in which member states have confidence must be created.

B. The Schengen Group

The Schengen Group was created by the signatories of the 1985 Schengen Agreement on the abolition of internal borders (Belgium, France, Germany, Luxembourg and the Netherlands). Italy was included as a member of the Group in 1990, Spain and Portugal joined in 1991, and Greece in 1992. Austria has been an observer since 1994.

Its activities are parallel to the work of all the EU countries in relation to asylum and border control issues, but they are of more elaborated character. In December 1989, the original signatories of the Agreement adopted a set of new agreements on free circulation, including a more detailed version of an agreement on country of first asylum than the Dublin Convention. However, these regulations are still far from being put fully into practice.

It was on 26 March 1995 that the Schengen Convention, which abolishes internal border controls between Belgium, France, Germany, Luxembourg, the Netherlands, Portugal, and Spain, came into force. Individuals travelling between these countries no longer need to present their passports, be they at airports, seaports or land border checkpoints. This applies indiscriminately to all travellers within the Schengen area.

The elimination of internal border checks between the Schengen group countries is, however, accompanied by the reinforcement of external borders to prevent illegal immigration and international crime. The police forces and legal institutions in these countries will cooperate closely, and in particular, they will operate a joint computer database -- the Schengen Information System (SIS). At present, non-EU nationals entering the Schengen area are subject to stricter controls than in the past.

The long delay in implementing the Schengen Agreement is a clear sign of the concerns that accompany liberalizing the movement of people, and the difficulties with securing the smooth operation of all accompanying measures, such as the harmonization of visa policies and cooperation between police forces and the SIS. Italy, Greece and Austria will implement the Convention once their national parliaments have ratified the accession instruments and their national SIS networks are in place.¹⁹

2.3. Pan-European cooperation

A. The Berlin/Budapest-process

The Berlin/Budapest process emanates from discussions within the Vienna-club, which is a forum established in 1978 for cooperation between the Ministers of Interior and Justice of Austria, France, Germany, Italy and Switzerland. The German Government invited all member States of the club and of the EC, as well as thirteen Central and East European states (including Poland), to a Ministerial Conference in Berlin in October 1991 to discuss "measures for checking illegal immigration from and through Central and Eastern Europe". A special group (known as the Berlin Group) became responsible for further action, in the framework of what was named the Berlin-process.

Several sub-groups were established according to the following themes: harmonizing sanctions against smuggling illegal immigrants, establishment of special forces to combat clandestine immigration networks, procedures and standards to improve frontier controls, readmission agreements and implementation of readmission, securing the external borders away from authorized crossing points, obligation of carrier companies to prevent illegal entry, etc.

¹⁹ See *International Migration Bulletin*, No. 6, United Nations/ECE, Geneva, May 1995, p. 11.

This process, involving about thirty-six European states, resulted in the Ministerial Conference on uncontrolled migration, which was held in Budapest in February 1993. Several recommendations adopted there cover all issues of relevance to increased border control cooperation in Europe in an East-West context. Moreover, Austria launched a proposal on a European Migration Convention, and Germany proposed a financial burden-sharing scheme for return operations. These proposals were to be further studied in the context of the Vienna-process.

The Berlin and Budapest conferences have certainly highlighted important issues in order to combat illegal immigration. They offered a good opportunity to stimulate the dialogue between Western, Central and Eastern European states on these matters.

B. The Vienna-process

The Vienna process emanated from the Ministerial Conference on the Movement of Persons from Central and East European Countries, which was held in January 1991 at the invitation of the Government of Austria and under the auspices of the Council of Europe. The conference concentrated on East-West movements of people and brought together thirty-five states. The Group of Senior Officials responsible for follow-up to the Vienna conference (the so-called Vienna Group) was established.

At the beginning, three working groups were involved in follow-up activities connected with the main subject of this meeting. They dealt with (1) visa harmonization, (2) the establishment of a special institution for information exchange, and (3) new solidarity structures between the participating states. These groups were chaired by France, Hungary and Italy respectively. Then, the problems of the right to asylum, the profile of potential migrants, freedom of movement of persons and other questions were also discussed.

Whereas the Berlin/Budapest-process was essentially concerned with combatting illegal migration and action against traffickers, the Vienna-process provided a more balanced framework in that it identified more clearly the basic needs and problems of Central and Eastern European countries. The Vienna conference had been initiated because of growing concerns about possible massive East-West migratory movements. These feared flows did not take place, with the exception of displaced persons from former Yugoslavia, but a number of Central and Eastern European

countries themselves faced serious problems concerning transit migration towards the West. It was found to be of interest to all participating states to discuss these questions and to monitor the potential and actual East-West migration.

However, since 1991, a number of Central and Eastern European states have joined the Council of Europe and have developed close cooperation with other international organizations and regional initiatives which deal also with migration issues (e.g. UNHCR, International Organization for Migration, Council of the Baltic Sea States). In view of this development, in September 1994, the Vienna Group decided to discontinue its meetings and transfer its mandate to the Council of Europe, or where appropriate to other specialized bodies, including the Conference on Security and Cooperation in Europe (CSCE).

C. The Council of Europe

In the years 1990-1995, a vast majority of the post-communist countries of Central and Eastern Europe, with most noticeable exception of Russia, became members of the Council of Europe. Therefore, it has been transformed almost fully into a pan-European framework for cooperation. Two of this organization's main forums on migration and asylum policies are the European Committee on Migration (CDMG) and the Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR).

One of the tasks of CDMG has been to prepare periodic Ministerial Conferences of European ministers responsible for migration policies. The latest two were held in Luxembourg (September 1991) and Athens (November 1993); the next will take place in Warsaw in 1996. These conferences are concerned with migration policies and migration flows as a whole, but also focus on the situation and integration of migrants already admitted into the territory of member states and on the relations between immigrant populations and the host society.

The Luxembourg conference, for example, concentrated on the actual and future evolution of migratory phenomena affecting Europe on the one hand, and on the evaluation of the Community Relations Project of the Council of Europe, completed in 1991, on the other. The Athens conference focused on the ways of handling migratory flows and on racism, xenophobia and intolerance.

Recently, CDMG has also undertaken studies concerning the following areas: (1) the relationship between migration, demography and employment; (2) the legal, economic and social status of migrant workers and members of their families; (3) equality of opportunity for immigrants, including their situation on the labour market, their chances of obtaining proper housing and cultural rights, etc; (4) short-term migration and the reintegration of emigrants into their country of origin.

The main task for CAHAR is exchange of information on asylum policies. In the past, it produced a number of creative ideas and proposals in this area. The Committee is currently examining the Convention on reduction of cases of multiple nationality and military obligations in cases of multiple nationality, which was adopted over thirty years ago, in 1963. Since then, many states now favour a more liberal approach to cases of multiple nationality. This is why CAHAR has made proposals for the preparation of a new Convention in the field of nationality.

Among other conventions prepared under the aegis of the Council of Europe, in this context mention should be made of the Convention on the Legal Status of Migrant Workers, as well as of the fundamental European Convention on Human Rights. The European Court of Human Rights has placed particular emphasis on the principle of family unity guaranteed under Art. 8 of the latter Convention, which can be invoked to protect migrant workers in cases of expulsion or refusal for entry for purposes of family reunion.

The right of asylum is not guaranteed as such in the Convention on Human Rights. However, the Court in its case-law has reaffirmed that such measures of repatriation of persons claiming that return to their countries of origin could expose them to persecution could also raise problems from the standpoint of Art. 3 and Art. 13. The former prohibits inhuman or degrading treatment, while the latter guarantees the right to an effective remedy.

At present, there is growing interest to establish a new European migration regime in an overall continental security framework. Europe needs to forge a joint border area from East to West. Common long-term objectives for immigration policies should be established. Comprehensive development and security strategies should ensure that massive and uncontrolled movements do not occur. Last but not least, a collective response to refugee flows appearing on the continent is necessary.

3. Poland's adjustments

A comprehensive and coherent Polish migration policy does not yet exist. Such a policy should determine priorities and executive structures (legislation, institutions, administrative practices) which are necessary to implement this policy. The mentioned structures are just in the development stage. Considerable impact on them is being exerted by West European and German immigration policy regimes.

3.1 Legal and institutional changes

Since 1989 the Polish Government has made a number of steps aiming at bringing its migration policy up to the standards that have been in force in international law for a long time, as well as those emerging only recently in Western Europe. In keeping with her strategic orientation towards Western civilization, Poland tries to develop her migration policies so that they become compatible with those of the West. The West is also interested in making the migration regimes of all European states as compatible as possible.

Poland is being more and more active in various forms of international cooperation in the field of migration-related issues. Since 1991 she has been taking part in the Vienna-process, concentrated on East-West movements of people, and the Berlin/Budapest-process, focused on illegal migration problems. Poland's membership in the Council of Europe (since 1991) and the International Organization for Migration (since 1992) is the factor which favours further intensification of interstate contacts in this sphere. Polish representatives also take part in the experts' consultations with other international institutions and forums.

In view of expected integration into the European Union, the Schengen migration regime is of particular significance for Poland. The authorities are on the way to adapting their migration policy to the harmonized Community approach under way. However, it is not easy to harmonize visa, entry, border control, readmission and asylum policies between Poland and West European states in the short term.

Some of the most important legal and institutional adjustments made in the field of migration after 1989 are as follows:

(1) On 22 November 1990, the position of the Plenipotentiary of the Minister of Interior for Refugees was created. In the following month the Office of the Plenipotentiary for Refugees was established. It was transformed into the Office for Migration and Refugee Affairs in February 1993.

(2) On 29 March 1991, Poland concluded an agreement with the Schengen States on lifting visa requirements and readmission of migrants in irregular situations. This accord was a sort of package deal: Poland was removed from the Schengen visa list at the cost of accepting return of illegal Polish immigrants staying in "Schengenland". It is worth noting that the resolution adopted at the Budapest Conference of 1993 refers to this accord as a valid basis for a broader multilateral agreement.

(3) On 15 May 1991, Border Guard replaced Border Protecting Army Units. While the former is de facto a type of border police, the latter were part of the Polish Army at the disposal of Minister of Interior and responsible for both border protecting and border control.

(4) On 2 September 1991, the Polish Parliament ratified the United Nations Convention relating to the Status of Refugees of 1951 together with the Protocol of 1967. In April of the next year the first refugee camp in Nadarzyn near Warsaw was established.

(5) In 1990-92, first bilateral agreements with Germany, France and Belgium on contract-employment, vocational training and seasonal work were negotiated and signed.

However, Poland is not yet a party of any international convention on the rights of migrant workers. First to be considered might be the convention of the ILO No. 97 on migration for employment and the European Social Charter, a convention of the Council of Europe.

(6) On 19 September 1991, the Law on Aliens of 1963 was amended. In the following month, on 18 October, the Parliament amended Art. 88 of the Constitution concerning the right of asylum. These modifications still do not meet current needs.

Article 6 of the amended Law on Aliens carries the general rules of the UN Convention on Refugees into Polish domestic law. However, new regulation added then in order to implement a decision on the expulsion of an illegal foreigner, which had provided detention in special detention centres for up to ninety days, was questioned by the Constitutional Tribunal as being incompatible with the existing Polish legislation on civil rights. As

a result, illegal aliens can now be detained for only up to 48 hours and are then released with the warning that they must leave the country.

At present, a new Act on Aliens, better adjusted to European standards, is being prepared. It means that Poland by now has not yet fully adopted aliens and asylum legislation similar to that of the West European states.

Another shortcoming is that the authorities do not have at their disposal the technical potentials to implement entry control policies along the same lines as states in Western Europe. The system of monitoring entrances to Poland and of foreigners' circulation in the country is very imperfect, which makes the data on the number of foreigners currently staying in Poland's territory vague and hardly available. The same situation also applies to the data on the citizens of a given country who entered Poland or received so-called administrative visa (which means that they have been expelled) or have illegally prolonged their stay in Poland. There are only estimates in this field, which vary a great deal depending on the source they come from.

3.2. Evolution of migration policies

Since 1989, a new philosophy and policy towards immigration and refugees has been taking shape in Poland. However, one can notice some general evolution of the Polish Government's approach in this area, from greater generosity to more restrictive policies. For the last several years, public opinion in Poland appears to have shifted in favour of immigration controls as well.

In the beginning, the Polish authorities tried to solve refugee problems in a humanitarian way, within the means at their disposal. We could observe this, for example, in the summer of 1989, when Poland lent considerable support to refugees from East Germany on their way to West Germany. In March 1990, the Prime Minister declared the Polish Government's readiness to help Jewish emigrants from the Soviet Union on their way to Israel. Also in March 1990, the issue of the so-called "Baltic boat people" sprang to the attention of the Polish authorities, as well as of the Polish Red Cross.

The latter case is particularly illustrative, because it shows how more and more restrictive asylum and refugee regulations in the West influence Poland. In December 1989, due to the large increase in the number of

asylum seekers in Sweden, the Government of that country changed its asylum policy and modified the relevant procedure. It was announced that only new arrivals qualifying as political refugees under the 1951 UN Refugee Convention would be allowed to remain in the country, and people in "refugee-like" situations would no longer qualify.

As a result, on 22 March 1990, the Swedish authorities decided to deport the first group of ninety-four Arab and African asylum seekers back to Poland. Some of them had fake Swedish visas. These were followed by others. Some time after that, about 1,000 Lebanese, Syrians, Somalis, Eritreans, Ethiopians and Iranians found themselves in Swinoujscie, a small port town in the northwest of Poland, deported from Sweden or trying to get there in order to seek political asylum or get international travel documents.

Although Poland was not a party of the UN Convention then, the Government granted permission for the refugees to remain in the country and provided them with all humanitarian aid needed (shelter, food, medical assistance, etc.). In an effort to resolve the problem, Poland also appealed to the UNHCR. These developments speeded up considerably the process of adaptation to international refugee standards. In particular, they compelled Poland to elaborate the procedure for defining the status of refugees.²⁰

As was already mentioned before, the Office for Migration and Refugee Affairs has been established, and the old Law on Aliens and the relevant provision of the Constitution have been revised. These primary steps made Polish refugee and asylum policy very open, liberal and generous. Very soon, however, the influence of West European restrictive measures on Polish regulations and practices has become apparent.

A proof of this impact might be the draft Law of Aliens submitted to the Parliament in 1995. It refers in more detailed way to the provisions on a refugee-asylum procedure. In particular, it widens the items on place, time and formal way for launching asylum applications. However, the draft also introduces the concept of "safe countries" to the Polish legislation. Art. 32 of the draft law provides that refugee status may be granted only to aliens who have arrived in Poland from "a country that is not a safe country of origin or a safe third country."²¹ This opens up the possibility to reject an

²⁰ More on this, see W. Aniol, "Poland's Response to the Refugee Phenomenon", in R.J. Smyke (ed.), *Coming, Going and Developing: The Significance of Refugees, Migrants and Returnees*, Working Group on Refugees of the European Association of Development Institutes, Geneva 1992.

²¹ *Draft Act on Aliens*, September 1995 (manuscript), p. 12.

application perceived as ungrounded without its full processing or to implement a simplified procedure in the case of asylum seekers.

According to UNHCR, although the draft law contains the basic rights of refugees, several of the proposed provisions give rise to serious concern as they are "in contravention of international refugee law." In its present form, they may not be compatible with the principle of non-refoulement. The draft does not identify a central, qualified and impartial decision-making body, responsible for refugee status determination. Therefore, the establishment of a fair and efficient procedure is not guaranteed.²²

Another good example of the "ripple effect" by which the changes in immigration regimes in the West affect relevant Polish regulations might be the introduction of visas for Bosnians and citizens of the Federal Republic of Yugoslavia. In this case, restrictive decisions undertaken in Scandinavian countries have brought about similar restrictive measures in Poland and the Czech Republic.

On 1 June 1993, Denmark and Sweden introduced visas for citizens of the Republic of Bosnia and Herzegovina and the "new" Yugoslavia. Too many visitors from these Balkan states wanted to stay in Scandinavia ignoring the three-month visit limit. Most of these immigrants were also illegally employed. Because of this and on the grounds of readmission regulations, in the first half of 1993, 412 citizens of the former Yugoslavia were deported to Poland from Scandinavian countries.

As of 1 July 1993, only a month later, similar visa requirements were introduced by Poland to avoid further irregular flows. The Czech Republic did the same at the same time. The Polish Government stressed, however, that it is still ready to provide shelter to refugees from former Yugoslavia and they can continue to apply for asylum. When reestablishing the duty of obtaining a visa, the Polish authorities took into account the fact that only a

²² Such a procedure, argues UNHCR, should include (1) an initial administrative decision by an organ of the central Government; (2) an administrative appeal reviewed by someone other than the initial decision-maker; (3) the opportunity for judicial review for both substantive and procedural reasons. An asylum-seeker should be given sufficient time to apply for refugee status, then should have a legal right to remain in Poland until the administrative and judicial review of his claim has been completed. See *Letter by J. Horekens, Director of the UNHCR Regional Bureau for Europe, to J. Zych, Speaker of the Sejm of the Republic of Poland*, 22 September 1995.

very small proportion of citizens of former Yugoslavia coming to Poland decided to use the refugee-asylum procedures available here.²³

One more example of Western immigration restrictions influencing the evolution of Poland's migration policy is carrier sanctions. They were introduced recently in a number of West European countries, effectively forcing airlines to act as unofficial immigration officers. Until now Poland has had no legal sanctions against the airlines which bring inadequately documented foreigners to the country. However, such regulations are expected to be introduced very soon. The Polish Border Guard already provides advice to airlines concerning the preparation and implementation of appropriate measures to prevent them from transporting undocumented passengers.

Besides, during the years 1992-1993, a number of measures aimed at substantial limitation of inflow of foreigners from a group of almost thirty Asian and African states, commonly called the "countries of increased (emigration) risk", were introduced. This includes, among other things, the demand for visa decisions of consular offices with relevant bodies in Poland, first of all the Border Guards.²⁴

4. The role of Germany

4.1. Changes in German asylum regime

The post-war German immigration regime was implicitly based on the presumption of an exit control system in Central and Eastern Europe. Since 1989, however, the revolutionary changes taking place all over this region have brought about rules allowing for easy travel out of these countries. Citizens of the post-Communist states have now the possibility to leave freely and to try to settle elsewhere. Germany is for them the most important destination country.

²³ For example, between January and May 1993, only about one hundred persons of over 23,000 citizens of Yugoslavia and 19,000 citizens of Bosnia, who entered the territory of Poland, applied for awarding the status of a refugee in this country. Most of them were in transit across Poland on their way to Scandinavian countries. See T.K. Kozłowski, *Poland: Between Transit, Asylum Seeking and Immigration. Legal and Institutional Consequences of the Phenomenon of Involuntary Migration. Paper prepared for the Seminar on Protection of Refugees in Central and Eastern Europe*, Sofia, 21-23 June 1994, pp. 5-6.

²⁴ See T.K. Kozłowski, *op.cit.*, p. 8.

In the past decade, Germany became the biggest receiving country in Europe. Constitutionally-guaranteed jus sanguinis-based nationality laws have until now welcomed returning ethnic Germans. 850,000 of them have returned to Germany in the past three years (respectively -- 397,000, 222,000 and 231,000 in 1990, 1991 and 1992). It is worth noting, however, that on 1 January 1993, the German Government modified its approach and presently the law allows up to 225,000 ethnic Germans from Eastern Europe and the former Soviet Union to repatriate to Germany annually.²⁵

The system of examining asylum applications which was created in Germany after the Second World War faced an ever increasing number of asylum seekers who often use the asylum request as a pretext to obtain a residence permit. In 1992, the number of asylum applications increased dramatically (up to 438,000), bringing Germany to the fringe of its reception resources.

Faced with waves of immigrants and asylum seekers, Germany has looked to the European Community for help, partly in sincere belief that this is a European problem, but partly out of expediency. During the negotiations on the Maastricht Treaty, Germany wanted much more EC involvement in asylum and immigration issues. The Government wanted to tighten its liberal asylum procedures and hoped that a Community-wide policy and stiffer EC rules would do the job for them. This EC policy inevitably would be less generous than the German one and, due to EC primacy over national law, would override the German Constitution.

However, because of Britain's refusal to accept any bigger EC role in "internal security" (meaning things like political asylum and immigration), the Maastricht Treaty does not provide specific EC rules on these issues. The United Kingdom insists it has to keep border controls on its own and believes that migration problems can be managed through more cooperation between individual governments.

In February 1992, a bill to amend the constitutional guarantee of the right of asylum was introduced in the German Parliament by the ruling coalition CDU/CSU. The draft bill maintained an individual right of asylum for political refugees, but provided in addition that asylum seekers would have no right to be recognized as refugees once they had entered from a country in which there is no danger of political persecution. Asylum

²⁵ D.G. Papademetriou, *op.cit.*, p. 27.

seekers falling under this clause might be refused entry at the border or might be deported after illegal entry.

In the beginning, the Social Democratic Party (SPD) was strongly against any constitutional amendment of the asylum clause. Therefore, the Government lacked the necessary two-thirds in the Bundestag to change the Basic Law. In time, however, SPD resigned from its opposition against such a change, but conditioned its support for a new law on reaching an agreement with Germany's neighbours: Poland, the Czech Republic and Austria.

According to SPD, Germany should seek assurances that asylum seekers would be admitted to the neighbouring countries and given an opportunity to apply for asylum there. It was also argued that the proposed changes in German legislation would shift the burden of solution of refugee problems to the shoulders of other states, including the countries which only recently acceded to the UN Convention on Refugees. Taking this into account, any changes in domestic law should be accompanied by international arrangements providing assistance to such countries as Poland and the Czech Republic.

Eventually, only one bilateral agreement -- on cooperation with Poland regarding the effects of migratory flows -- was enough for getting opposition support to tighten Germany's asylum regime.

In 1993, the German Parliament adopted on 26 May in the Bundestag and at a subsequent session at the Bundesrat on 28 May a constitutional change allowing for new measures concerning asylum. In view of this change two main issues have been of concern, namely: that the right of asylum must be retained for persons genuinely subject to political persecution, and that there is a definite need to counteract any blatant abuse of the right of asylum.

The change involves amendments to Article 16 of the Constitution. Under its original version, the presentation of the right to political asylum without qualifications allowed for very liberal entry policies. Every asylum request had to be examined in accordance with a complex and time-consuming asylum procedure. In the meantime the person requesting asylum was granted the right of entry and a residence permit valid until the asylum procedure was concluded.

The new Article 16a contains qualifications and exceptions to the provision that "the politically persecuted have the right to asylum". The main qualification is that if a person arrives from any country of the

European Communities or from another country where the UN Convention on the Status of Refugees of 1951 is applied, and where the rights of refugees and basic human rights appear to be guaranteed, then that person cannot apply for political asylum.

At this stage all of Germany's direct neighbours, including Poland, as well as all West European and Scandinavian countries, are considered as "safe third countries".

4.2. Implications for Poland

The above mentioned agreement between Germany and Poland on cooperation regarding the effects of migratory flows was signed in Bonn on 7 May 1993. It entered into force on 1 July the same year, together with the German laws amending asylum procedure, aliens and nationality provisions and revising benefits for asylum seekers, which implement the new constitutional position. The main points of the Polish-German agreement are as follows:

(1) Applicants for asylum who entered Germany illegally from Poland as a transit country will be sent back within six months after their arrival or stay has come to the attention of the authorities. No-one who entered Germany via Poland before the new German asylum law entered into force and submitted an application for asylum will be returned.

(2) The agreement allows Germany to deport to Poland up to 10,000 rejected applicants for asylum in 1993. After this year, the Germans will be allowed to deport unlimited numbers of rejected applicants arriving from Poland, but only within six months of their arrival.

(3) In the event of exceptional circumstances resulting in sudden or massive influxes of immigrants into the territory of Poland, Germany will authorize entry for certain categories of such persons.

(4) The agreement provides for financial assistance for Poland, which amounts to a total of 120 million DM for 1993 and 1994. It is intended to help implement the agreed program of measures covering in particular three areas: (a) the creation of infrastructure for refugees and asylum seekers; (b) strengthening of border protection; (c) increased protection of public safety.

The bilateral negotiations on this agreement lasted half a year and the difficulty of reaching a compromise was that immigration is highly sensitive for both Germany and Poland. These two countries are more prone to migration movements than others due to their geographical proximity to the migrant sending areas.

In the beginning, the Germans argued that the amended German laws on granting asylum would work retroactively. The number of asylum seekers that Poland will have to receive in 1993 and the scope of financial assistance to be supplied by Germany were also a bone of contention.

The agreement of May 1993 de facto modifies some points of the former agreement on readmission of April 1991 signed with Germany as a member of the Schengen Group. Germany was trying to include all unwanted aliens who arrived through Poland under the provisions of the former agreement, but the question was whether Poland should be obliged to take back only Polish citizens (staying as guestworkers in Germany over the permitted three-month period) or all illegal migrants after they have travelled through Poland to enter Germany.

As a result, by signing the agreement of May 1993 Poland has accepted the principle of the "safe third state" as the first country in Central and Eastern Europe. The essence of this concept is that applicants for asylum are coming from a country in which they were safe from persecution and may be returned. This principle was an essential part of the efforts to devise more expedient asylum procedures in Germany. Because of many reasons, however, the concept of the "safe third state" poses a number of questions and seems to be of limited use in the present situation in Europe.

First of all, the fact that an asylum seeker could have found protection elsewhere does not necessarily mean that his or her application is unfounded in terms of the 1951 UN Convention. As the UNHCR has stated in a paper on this topic, "There is no international rule or principle whereby a person who has left his country in order to escape persecution must apply for recognition of refugee status or asylum in the first safe country he has been able to reach."²⁶

It is also argued that, in accordance with the letter and spirit of the 1951 UN Convention, the principle of the "safe third country" can be applied

²⁶ The "Safe Third Country" Policy in the Light of the International Obligations of Countries vis-a-vis Refugees and Asylum-Seekers. Paper issued by the UNHCR Branch Office, London, July 1993.

only with regard to the individuals whose status of refugees has been already determined. Only in this case a state may count on the support of international organizations (such as UNHCR or IOM) in terms of arranging the settlement of these people in third countries.

The implementation of the concept of the "safe third country" with regard to Poland is likely to put some pressures on the still fragile system of refugee protection in the country. It will be difficult to assure the effective and durable protection of asylum seekers in Poland, if large numbers of them are sent back from Germany. It will take time to develop the necessary infrastructure capable in practice of dealing with them. Besides, Poland has become the target of still increasing illegal transit movements of third country citizens who try to settle in Western Europe.

The problem is that almost all the people sent back from Germany are third country nationals without any established right of residence in Poland. Therefore, the vital question is how to facilitate returns directly to the countries of origin, through joint negotiations and multilateral agreements between all states concerned.

In 1993, under German pressure or afraid of negative aspects of the new German solutions and bilateral agreement, Poland managed to sign readmission agreements with the Czech Republic (10 May), Ukraine (24 May), Slovakia (8 July), Romania (24 July) and Bulgaria (25 August). In addition, the agreements on repealing visas with Lithuania, Latvia and Estonia include readmission clauses. Similar readmission agreements with some other countries (Russia, Belarus, Hungary) are now under negotiation.

Taking into account the current trend towards an increase in irregular movements of people in the region and the lack of effective multilateral cooperation mechanism to deal with them, the Polish Ministry of Interior has also considered the introduction of entry visas for the citizens of Romania, Bulgaria and the Commonwealth of Independent States. Some political parties have strongly supported this solution arguing that the flow of ex-Soviets undermines Polish small business and agriculture in many regions of the country. So far, however, these demands have failed to affect the government's policies.

There is also talk that Germany is trying to solve her problems with refugees and illegal immigrants at Poland's expense, namely by deporting them back to our country. According to such opinions, Poland is assigned the role of a sieve or filter for migrants coming to Germany from the East.

Or, to put it in other words, Poland increasingly plays the role of a supervisor at the extended borders of Europe to ensure that irregular immigration does not grow out of control.

Conclusions

The countries of Western Europe have long since established national regimes and cooperation systems with respect to the movements of people. These regimes and systems have evolved during decades according to prevailing political and economic circumstances.

Different forms of West European international cooperation in this field cover a vast array of areas: agreements of the free circulation of persons, rules for the hiring and treatment of foreign labour force, common visa and border control arrangements, as well as cooperation to ensure the protection of refugees. In addition to extensive bilateral actions in these areas, a complex multilateral machinery has developed to facilitate the achievement of common goals. Its main components are now various bodies of the European Union and the Schengen Group.

In the late 1980s and early 1990s, many of the assumptions on the volume and character of European migratory flows, upon which these national regimes and international activities in the field of migration and asylum policies were based, started to decrease in strength.²⁷ Total gross immigration to EU states appears to be on the constant increase and to be less controllable than hitherto. The proportion of irregular versus regular immigration of total inflows seems to grow. Nationals of countries in Central and Eastern Europe have the possibility to leave freely and to try settle elsewhere. Finally, large scale refugee and asylum-seeker movements (resembling those occurring in the aftermath of the second world war) have appeared again.

These radical changes in migratory patterns have prompted European states to seek to adapt existing national regimes and cooperation mechanisms to the new challenges. Immigration policy, both in most countries and at EU level, emphasizes tighter control of the numbers of immigrants.²⁸ New pan-European frameworks to address the new

²⁷ See N. Hopkinson, *Responses to Western Europe's Immigration Crisis*, Wilton Park Paper 84, London, March 1994; H. Fassman, R. Muenz, P. de Janosi (eds.), *European Migration in the Late Twentieth Century*, Aldershot 1994.

²⁸ A. Geddes, "Immigrant and Ethnic Minorities and the European Union's 'Democratic Deficit'", *Journal of Common Market Studies*, vol. 33, No. 2, 1995.

migration situation, such as the Berlin/Budapest-process and the Vienna-process, have been established. The Council of Europe has become a relevant forum for discussing and solving migratory and asylum problems on the pan-European level.²⁹

Introducing strict visa and asylum policies combined with sanctions for smugglers of illegal "visitors" minimizes the chances of refugees and potential immigrants entering West European countries. A rising percentage of applications for asylum are rejected as "manifestly unfounded". Implementation of the Maastricht Treaty and the Schengen Agreement will result even in much stricter controls at the external borders of the European Union. All these restrictive measures may lead to a long-term increase in the number of immigrants and refugees in countries bordering on the European Union, including Poland.

The current thrust of asylum policies in Western Europe and discussions on "burden-sharing" might be interpreted as an attempt to transfer the "burden of asylum seekers" eastward, that is to limit the number of refugees reaching Western Europe by extending the system for taking in asylum-seekers to Central and East European countries.³⁰ This may lead, however, to a "domino or spill-over effect" of tighter asylum laws and stricter border-controls also taking hold in the latter countries, already becoming "countries of first asylum".

The case of Poland's immigration policy shows that previously more liberal approach, adopted soon after the political breakthrough of 1989, is being slowly replaced by a more restrictive attitude. Germany's new asylum law, introducing the safe country principle, has affected this evolution particularly. Poland has followed suit under the German and other West European influences. The concept of safe country, controversial in the light of international law, has been embodied in the new draft Law on Aliens of 1995. Additionally, an increasing immigration pressure by citizens of the former Soviet Union may make still valid relatively liberal principles of entry and stay in Poland more restrictive.

²⁹ More on this point, see J. Widgren, *The Need for a New Multilateral Order to Prevent Mass Movements from Becoming a Security Threat in Europe*, Paper prepared for the Conference organized by the Center for Strategic and International Studies, Taormina, 1-3 April 1993; *Towards Collective European Cooperation with Respect to the Movements of People. A draft report for the Vienna-process prepared by J. Widgren*, Doc. 51, Council of Europe, Strasbourg, 3 June 1993.

³⁰ See *Preliminary Draft Report on Refugees and Asylum-seekers in Central and Eastern Europe*, (Rapporteur: Mr Iwinski), Parliamentary Assembly, Council of Europe, Strasbourg, 3 April 1995, p. 10.

Chapter III

The Europeanization of Polish Ethnic Policy

Introduction

The Polish state policy towards national minorities underwent basic transformation between 1989 and 1995. The new policy is aimed at enabling the development of the cultural identity of minorities, as well as their integration with the local communities and participation in public affairs.

Today, the social and political situation of minorities in Poland is quite different from that of 1989. These positive changes became possible, first of all, because of the "democratic revolution", which started in the country in 1989. Apart from domestic sources of this transformation, a substantial influence on the position of national minorities in Poland has been exerted by a dramatically changed international environment.

First, Poland has new neighbours who take vivid interest in the situation of minorities.¹ With the exception of the united Germany, all of them are successors of the former Soviet Union and Czechoslovakia. With the emergence of those new states, the importance of the national minorities issue in Poland has grown a great deal. The new neighbours are paying close attention to the situation of their national groups in Poland.

Secondly, the country's efforts to integrate with Western Europe means that Poland has to accept and respect specific standards of protecting the rights of national minorities, which emerged in the work of European institutions, particularly in the Organization for Security and Cooperation in Europe (OSCE), formerly the CSCE, and the Council of Europe. What

¹ All the neighbours of Poland changed in 1990-1993. Instead of the former three (the Soviet Union, Czechoslovakia and the GDR) there are seven new neighbours: Russia, Lithuania, Belarus, the Ukraine, Slovakia, the Czech Republic, and the FRG.

we have observed during the last four years has been transformation of many provisions of OSCE political documents into legally binding bilateral treaties negotiated by Poland with all of its neighbours. All of these accords contain provisions on protection of the rights of persons belonging to national minorities.²

For many reasons, the situation of the German minority in Poland is unique. First of all, it is the biggest national minority in the country. Then, in comparison with other minorities, its situation has changed in the 1990s most dramatically. Last but not least, it seems that international factors have played in this case, relatively, the most important role.

1. Historical background

1.1. From the multinational to more homogenous Polish state

For a major part of her history, Poland was a country of many nations. Up to the 12th century she was inhabited almost exclusively by the native population, the Slavs, descendants of the Lechite tribes of the pre-state period. From the 13th century onwards, however, populations of German and Jewish origin grew, especially in towns. A completely new ethnic situation in Poland was created after concluding the Union with Lithuania in 1385, which endured more than 400 years. The state was then inhabited not only by Poles and Lithuanians, but also by various other ethnic groups - Ruthenians, Armenians, Tartars, not to mention Germans and Jews - professing a variety of religions: Catholic, Protestant, Orthodox, Judaistic, Muslim and others. The highly mixed ethnic composition of the population and the tradition of a powerful federal state, in which Poles enjoyed dominant political and cultural position, strongly influenced popular mentality during the First Polish Republic.

Conquered and ruled in the 19th century by three great empires - Russian, Austro-Hungarian and German (earlier Prussia) - Poland avoided

² The first treaty to be signed was that with Germany (signed on 17 June 1991), followed by treaties with the Czech and Slovak Republic (6 October 1991), Ukraine (18 May 1992), Russia (22 May 1992), Belarus (23 June 1992), and Lithuania (24 April 1994). See "Poland's International Obligations with Regard to National Minorities (selected by L. Wierzycka)", *The Polish Quarterly of International Affairs*, vol. 1, No. 1-2, Summer/Autumn 1992; *Synopsis of provisions for respect of frontiers and territorial integrity and the rights of national minorities contained in the treaties concluded by the Republic of Poland with its neighbours. Presented to the Inaugural Conference for the Pact on Stability in Europe*, Paris, 26-27 May 1994.

a form of natural evolution towards the nation-state based on the classic Western model. This explains also the relatively strong attachment of the Polish nation to its own identity, of its particular "delicacy", distrust and suspicion towards other ethnic groups and neighbours. During that period, Polish nationalism had a defensive character and was sustained by the feeling of an endangered national identity.

The Polish state, which was rebuilt in 1918 after 123 years of captivity, did not restore its pre-partition borders, but was multinational in character as well. According to the census of 1921, its population was 27 million, with Poles amounting to 69%; the Ukrainians, 14%; Jews, 8%; Belarussians, 3,9%; Germans, 3,8%. There were also certain numbers of Lithuanians, Russians and Czechs.³ It proved impossible to avoid some manifestation of xenophobia, national and religious tensions and conflicts during the interwar period.

After World War II, the Potsdam Conference (17 July - 2 August 1945) defined Poland's western border on the Oder (Odra) and Lusatian Neisse (Nysa Łużycka) Rivers. At the same time, her eastern border was established along the Curzon Line. The shifting of the state westwards was accompanied by the expulsion of the German population (that having been determined also in Potsdam), as well as with the resettlement of millions of Poles from the lost eastern territories into new areas acquired by Poland in the West and North, including the major part of former East Prussia and the former free city of Gdansk. One must add that almost all the Polish Jews (some three million) lost their lives in German Nazi death camps.

As a result, in terms of ethnicity, religion and language, today Poland is one of the most homogenous states in Europe. That does not mean, however, that Polish society is monocultural. Between 1 and 1.5 million Polish citizens of non-Polish nationality live within the borders of the Republic of Poland. That is about 2-4% of all citizens. These are not accurate data, however, since in post-World-War-II population censuses questions concerning national status were never included.

Minorities live throughout the entire country, some partly concentrated in specific regions, others dispersed throughout. According to present statistics, or rather estimates, there are about 300,000-500,000 ethnic Germans (mostly concentrated in Silesia, but also in the Warmia and Mazury region), 300,000 Ukrainians (scattered around the country),

³ See M. Tymowski, *Outline of History of the Polish State*, Polish Information Agency, Warsaw 1992, p. 11.

200,000-250,000 Belarussians (living mainly in the Podlasie region in the East of Poland), 20,000-30,000 Gypsies, 20,000-25,000 Lithuanians (Punk and Sejny districts in the Northern-East), 20,000 Slovaks (Southern Poland), and 10,000-15,000 Jews. This ethnic mosaic is completed by small communities of Russians, Greeks, Armenians, Czechs and Tartars.⁴

1.2. Does the German minority exist?

As mentioned before, the Potsdam Conference decided to evacuate the German population of the areas acquired by Poland east of the Oder and the Lusatian Neisse. It is estimated that, all in all, around 3 million Germans left or were expelled from these territories between 1945 and 1950. However, the group of about one million autochthons stayed and were validated as Polish citizens. The majority of these were "locals" -- regional groups with vague and ambiguous national identities, such as the Silesians, Mazurians, Warmians or Kashubes. The Silesian, for example, most often felt himself a Silesian first, a Pole or German only second. Under German administration many of them had cultivated Polish language, surnames, cultural and religious traditions. Others spoke German at home and their predominant feeling was that they belonged to the German community. There were also mixed families having roots both in Polish and German cultures.

Lack of tolerance towards their retaining a separate cultural identity was a reason for emigration. The post-war policy of "enforced polonization" tended to have opposite effect: many people suddenly remembered the German ancestry they had once rejected. One can fairly assume, however, that a major factor behind their decision to leave was the growing difference between living standards in Poland and the Federal Republic of Germany. Many chose to live in the FRG because it was a wealthy and democratic country. Citizenship in the German welfare state was perceived as a precious and desirable good which assured them at least a minimal subsistence and social security for the rest of life.

It is estimated that some 424,000 people emigrated from Poland to the FRG between 1955 and 1974, and additionally, some 200,000 persons left

⁴ *Mniejszości narodowe w Polsce i polityka państwa polskiego wobec nich*, Biuro ds. Kultury Mniejszości Narodowych Ministerstwa Kultury i Sztuki, 15 September 1995, p. 1. Compare: R. Walicki, *Mniejszości narodowe w Polsce w 1992 r. w świetle badań empirycznych*, Biuro Studiów i Ekspertyz, Kancelaria Sejmu, Warszawa 1993, pp. 1-4.

the country under the Gierek-Schmidt family reunification agreement of 1975.⁵ The exodus resulted in the disappearance of German-language education and the demise of German newspapers and magazines. After several waves of post-war emigration to the FRG, the Polish authorities stated that the problem of German minority in Poland no longer existed.⁶ But people cultivating the German language, culture and tradition still lived in the country, mostly in the regions of the former German Reich that after the war became part of Poland.

Thus, under communist rule, a kind of "political schizophrenia" in Poland's ethnic policy, especially towards the German minority, prevailed. In the 1970s and 1980s the authorities issued exit permits to persons who could produce incontrovertible proof of ethnic German origin, a practice that was, after all, positive proof of the existence of a German minority. At the same time, however, the authorities did not recognize such persons as constituting a national minority and did not ensure the rights that go with that to encourage them to remain in Poland. All in all, Polish authorities did not want to recognize fully the existence of national minorities, and instead professed the philosophy of a nationally uniform state.⁷

2. European environment

2.1. Internationalization of the nation-states

Two contradictory tendencies have been developing in Europe recently. In many countries, national identities are progressively losing

⁵ The numbers quoted by J. Kosiarski, "The German Minority in Poland", *The Polish Quarterly of International Affairs*, vol. 1, No. 1-2, Summer/Autumn 1992, pp. 48-49. The package deal, made by the Polish Communist Party First Secretary E. Gierek and Chancellor H. Schmidt during the final CSCE conference in Helsinki, resulted in three agreements signed in Warsaw on 9 October 1975. Under the first one, Poland permitted 120-125 thousand Polish citizens of German origin to leave for the FRG within the next four years (in 1976 the Polish government agreed to prolong this period). The second one concerned the global sum of compensation (1.3 billion DM) for those inhabitants of Poland who had the right to pensions in the FRG. According to the third one, the FRG granted credits to Poland, amounting to 2 billion DM, for the development of Polish economy.

⁶ General W. Jaruzelski said in Wrocław on 7 May 1985: "We have done more than was required of us in discharging all our international obligations regarding the repatriation and reunification of families separated by the war. The problem of a German national minority in Poland has thereby ceased to exist once and for all." See J. Barcz (ed.), *Historyczne, polityczne i prawne aspekty tez RFN o niemieckich mniejszościach narodowych w Polsce (wybór dokumentów)*, Warszawa 1988, Part II, p. 59.

⁷ For a more comprehensive treatment of this issue, see C. Żołędowski, "Mniejszości narodowe w Polsce", in: A. Rajkiewicz (ed.), *Spoleczeństwo polskie w latach 1989-93. Wybrane zagadnienia i dane z zakresu polityki społecznej*, Warszawa 1994.

their strength and importance, but, at the same time, in numerous places ethnic tensions and conflicts are reappearing.

For many reasons, resurgent nationalism is particularly apparent in post-communist Central and Eastern Europe.⁸ The long-muted and forcibly contained national aspirations in this region are reviving now with redoubled strength. Any maintenance of the one-party control needed a high centralization of political power and excluded a real ethnic autonomy or respect for minority rights. In addition, there are highly complicated ethnic mosaics in the vast majority of East and Central countries, which have for centuries created border disputes, false prejudices and resentments.

The two parts of Europe have also developed two different types of national ideology. While the "Eastern" model views the nation, above all, as an organic cultural and ethnic unit, the "Western" one regards it as a rational association of common laws within a defined territory.

The "Eastern" type of nationalism emerged out of the situation of incorporated ethnic communities, and is more preoccupied with native descent and such elements of folk culture as language, religion, customs and rituals. On the other hand, the "Western" model arose out of the West European absolutist states, and emphasizes the centrality of a national territory (homeland), a common system of laws and institutions, the legal equality of citizens in a political community, and the importance of a mass, civic culture binding the citizens together.⁹

These two historical types of national ideology, which emerged in the past out of different regional contexts, retain some importance today. It is not by coincidence that, while in France citizenship derives above all from "jus soli" (place of birth), in Germany citizenship is largely contingent upon "jus sanguinis" (line of descent).

The German case illustrates the difficulty of defining citizenship by ethnicity. Germany's law on citizenship, written in 1913, says that citizenship is a blood-right, not a birth-right. The result is that third- or fourth-generation ethnic Germans, for instance from Poland, get passports on demand, if they can prove they are German. However, proving they are

⁸ See Z. Brzezinski, "Post-Communist Nationalism", *Foreign Affairs*, Winter 1989; S.I. Griffiths, *Nationalism and Ethnic Conflict: Threats to European Security*, Oxford 1993; Ch. Kupchan (ed.), *Nationalism and Nationalities in the New Europe*, Ithaca 1995.

⁹ For a more comprehensive treatment of the distinction between these two types of nationalism, see A.D. Smith, *The Ethnic Origins of Nations*, Oxford 1986; E. Kedourie, *Nationalism*, Oxford 1993; E. Gellner, *Encounters with Nationalism*, Oxford 1994. See also A.D. Smith, "National Identity and the Idea of European Unity", *International Affairs*, January 1992, vol. 68, No. 1, p. 61.

German is not a very easy task: ancient certificates must be found, evidence provided of family and cultural ties, a proof-of-ethnicity questionnaire filled, etc. On the other hand, children of guest-workers, who were born and brought up in Germany, speak perfect German and have almost no contact with their homeland face years of trouble getting German citizenship.

The second strong tendency in Europe is that the number and scale of social identifications have been multiplying. They are concentric rather than conflictual, but may also weaken and reduce each other. The challenge of internationalization to the European states affects national identities. The growing erosion of the traditional nation-states within the European Union speeds up evolution of human identity both upwards and downwards -- towards a broader European community on the one hand, and towards different local and regional communities on the other. The question of a "European identity", as opposed to the existing traditional national identifications, arises.

Traditionally, citizenship has been viewed as a legal status tied to membership in a nation-state, and as a bundle of duties and rights that go along with such membership. Thus, the original idea was that citizenship must be an expression of unique loyalty.¹⁰ Today, however, the concept of the nation-state as a basic "guarantor" of citizenship in its classic sense is in crisis.

As a result, there is much talk about "European citizenship".¹¹ Another consequence is that, although most often dual citizenship is still seen as an unwelcome anomaly, some European countries have recently changed their laws to facilitate access to it. For example, the Czech Republic decided to honour dual citizenship with any country that does not explicitly bar it, except Slovakia.¹² A growing number of states, including Poland and Germany, tolerate this phenomenon in practice.

There is also an intensive debate on different types of citizenship -- civil, political and social -- each of them having distinctive features.¹³ The

¹⁰ See B.S. Turner, *Citizenship and Capitalism: The Debate over Reformism*, London 1986.

¹¹ See, for example, E. Meehan, *Citizenship and the European Community*, London 1993; R. Bauboeck, *Transnational Citizenship: Membership and Rights in International Migration*, Aldershot 1994; P. Howe, "A Community of Europeans: The Requisite Underpinnings", *Journal of Common Market Studies*, vol. 33, No. 1, March 1995.

¹² *The Economist*, 31 July 1993, p. 32.

¹³ For the first time, these three basic types of citizenship were identified and analyzed by T.H. Marshall, *Citizenship and Social Class and Other Essays*, Cambridge 1950. The author argues that in the contemporary world human progress can be measured especially by the degree of extension of social citizenship.

limitations and gradation of citizenship, as well as unequal social access to citizenship rights, are pointed out. The acquisition of citizenship rights, however, does not mean necessarily that such rights are exercised. Class and ethnic inequalities reduce the sense of community membership felt by many people.¹⁴

Local differentiations in citizenship rights within the nation-states are increasing. Housing, education, and health facilities vary from district to district and from town to town in the same nation-state, due to the differing performance of local public services, administrations and third-sector associations. Unequal social citizenship has become particularly apparent in the emergence of new urban underclasses in which immigrant and minority groups are highly overrepresented.

The people with a legal and permanent status occupy a kind of "grey zone" between simple aliens and naturalised citizens: despite enjoying some social and economic rights, they are deprived, for instance, of voting rights in general elections. This disfranchised population, called by T. Hammar "denizens", is estimated in Western Europe at 7-8 million.¹⁵

At the same time, in most Western European states long-term legal immigrants enjoy some rights linked to residence and based on membership in a society rather than in a state. They generally include increased civil rights (e.g. to change jobs and residence) and some political rights, including to unionize or even to vote in local elections (as in the case of Scandinavian countries and the Netherlands).

Against this background one may look at the development of systems protecting the rights of national minorities in Europe, on both the national and international levels. Legal models of protection of minorities vary from country to country. This diversity reflects the complexity of factual situations, as well as the concern of states to establish effective national systems of protection. Every minority situation presents its own particular characteristics. A proof of this might be the lack of a generally accepted definition of a "minority". This concept is combined with several terms of qualification: ethnic, linguistic, religious, cultural or, more rarely, national.

¹⁴ More on this, see I. Culpitt, *Welfare and Citizenship: Beyond the Crisis of the Welfare State?*, London 1992; B. van Steenberghe (ed.), *The Condition of Citizenship*, London 1993; B.S. Turner (ed.), *Citizenship and Social Theory*, London 1993; H. Coenen, P. Leisink (eds.), *Work and Citizenship in the New Europe*, Aldershot 1993.

¹⁵ T. Hammar, *Democracy and Nation State*, Aldershot 1990.

Therefore, models which might be directly "exportable" from one national context to another do not exist.¹⁶

In recent years, legislation relating to the rights of minorities has undergone important modification in most European countries. Two basic common tendencies in this domain should be emphasized.

First, most of the criteria used by the states in the definition of their minorities are still objective ones, such as citizenship, residence, a lasting presence in the territory, distinct language, own cultural heritage, traditions or religion. Recently, however, criteria of a somewhat more subjective nature are preferred, such as "considering oneself as belonging to a minority". The changes in legal systems tend in the same direction: belonging or not belonging to a minority is regarded as the result, in principle, of a free personal choice.

Secondly, the approach to minorities' rights, which simultaneously takes into account their individual and collective aspects, is increasingly adopted. In describing the rights of minorities the focus is still upon persons belonging to these groups (although in some countries, e.g. in Hungary, stress is put on groups of these persons as entities). But exercising the rights of minorities often requires a wider approach. Individual protection alone, through classic fundamental rights and the mere application of the principles of equality and non-discrimination, is no longer regarded as sufficient.

From this perspective, the minority group is no longer simply the sum of its members but represents a distinct entity which itself enjoys rights. States opt for specific positive measures to be taken in favour of whole categories of individuals, that is minorities as such. The use of this mechanism of "positive discrimination" indicates transition from a strictly individual conception of the protection of minorities to a more collective approach.

Both Poland and Germany, in their legislation and bilateral treaties, consequently refer to the individual rights of persons belonging to national minorities, but different affirmative actions taken by the states, which make the protection granted more effective, might prove the above mentioned evolution.

2.2. International standards on national minorities

In general, European governments continue to regard minority rights mostly as national matters. The European Union, for example, has not provided a common framework for the treatment of collective minority rights, such as cultural autonomy, protection against racist and ethnic discrimination, and affirmative action programs.

However, the development of international standards for the protection of national minorities is well advanced within other European structures. This is particularly reflected in OSCE decisions, politically binding for all member states, and in the work in progress in the Council of Europe. In the course of the past few years, national minorities have become one of the principal concerns of both organizations.

Poland has been a participating state of the OSCE (formerly CSCE) from the very beginning of the Helsinki process in the mid- 1970s, and its full membership in the Council of Europe dates from 26 November 1991.

A. OSCE commitments

Though without the legally binding force of an international accord and not subject to ratification, OSCE documents represent an important political commitment. The political nature of the principles on which the OSCE operates seem particularly suited to a problem as difficult and sensitive as national minorities.

The OSCE commitments constitute the most developed multilateral set of norms with respect to rights of persons belonging to national minorities. A milestone in the development of international standards for the protection of minorities was the Document of the Copenhagen Meeting on the Human Dimension of the CSCE, which was adopted by consensus on 29 June 1990. The provisions relating to minorities are included in Chapter IV (paras 30-39) of this Document and can be divided into four basic groups.

The first comprises provisions expressing several general principles relating to minorities and reaffirmed by the participating states. They include the following statements:

(1) respect for the rights of persons belonging to national minorities constitutes part of universally recognized human rights (para. 30);

(2) persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law (para. 31);

(3) to belong to a national minority is a matter of a person's individual choice and no advantage may arise from the exercise of such choice (para. 32);

(4) persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic and religious identity and to maintain and develop their culture (para.32).

The second group of provisions defines the specific rights of persons belonging to minorities (para. 32). The Document enumerates the following rights:

(1) free use of their mother tongue in private and public;

(2) establishment and maintenance of their own educational, cultural and religious institutions, organizations or associations;

(3) profession and practice of religion, including the acquisition, possession, and use of religious materials, and conduct of religious educational activities in their mother tongue;

(4) establishment and maintenance of unimpeded contacts among themselves within their country, as well as contacts across frontiers with citizens of other states with whom they share a common ethnic origin, cultural heritage or religious beliefs;

(5) access to information in their mother tongue and its dissemination and exchange;

(6) establishment and maintenance of organizations or associations within their country and participation in international non-governmental organizations.

This paragraph also includes the formula stating that "Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group". Such formulation confirms that the rights, even if described individually, may require collective exercise.

The third group of provisions concerns the obligations of states to protect "the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that

identity" (para. 33). In particular, the Document specifies that states are required to:

(1) endeavour to ensure that persons belonging to national minorities, notwithstanding any obligation to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue (para. 34);

(2) where possible and necessary, enable use of the mother tongue before public authorities, in conformity with applicable national legislation (para. 34);

(3) respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in affairs relating to the protection and promotion of the identity of such minorities (para. 35);

(4) recognize the particular importance of increasing constructive international cooperation on issues relating to national minorities (para. 36).

The fourth group of provisions are ones that point explicitly to the political limits and those arising from international law, on the exercise of the rights by persons belonging to national minorities. A general declaration that cooperation on the question of minorities should aim at promoting "mutual understanding and confidence, friendly and good-neighbourly relations, international peace, security and justice" (para. 36) is followed by the statement that "none of these commitments may be interpreted as implying any right to engage in any activity or perform any action in contravention of the purposes and principles of the Charter of the United Nations, other obligations under international law or the provisions of the Final Act, including the principle of territorial integrity of States" (para. 37).

According to many observers, in the foreseeable future, a number of political factors rule out the likelihood of any development of standards for the protection of minorities beyond the provisions of the Copenhagen Document, which seems to represent the maximum acceptable to European states in current circumstances.¹⁷

¹⁷ J. Barcz, "Protection of National Minorities under the CSCE System and European Standards", *The Polish Quarterly of International Affairs*, vol. 1, No. 1-2, Summer/Autumn 1992, p. 170. See also J. Barcz, "European Standards for the Protection of National Minorities with Special Regard to the CSCE: Present State and Conditions of Development", in: A. Bloed, W. de Jonge (eds.), *Legal Aspects of a New European Infrastructure*, Utrecht 1992.

B. Council of Europe conventions

The Council of Europe has dealt with the situation of national minorities on a number of occasions over a period of more than forty years, but only in recent years, in effect since 1990, has the question of the protection of minorities been under very careful examination by this organization. Two specific legal instruments in this area have been adopted so far, although they have not yet entered into force. One more instrument is under preparation at this time.

1. The European Charter for Regional or Minority Languages was opened for signature on 5 November 1992. The aim of the convention is to ensure that these languages are used in education; by administrative authorities at local, regional and national level; and in the media, as well as to encourage their use in economic and social life and in cultural activities. This convention leaves a wide margin of choice to each of the contracting parties, which must undertake to apply a minimum of 35 paragraphs or sub-paragraphs chosen from among more than 90. The contracting states must also specify to which regional or minority language the Charter applies.

Poland is not a party to the Charter. Until now only Norway and Finland have ratified it. It needs three more ratifications in order to enter into force.

2. The Framework Convention for the Protection of National Minorities was opened for signature on 1 February 1995. It is the first legally binding multilateral instrument devoted to the protection of national minorities in general. Poland and over 20 other states have already signed this document. However, the number of ratifications required for its entry into force is excessively high -- not less than twelve, while normally Council of Europe conventions require three to five ratifications.

The Convention contains mostly programme-type provisions setting out objectives and leaving the state concerned a measure of discretion in the implementation of these objectives. It does not imply the recognition of collective rights. The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others (Article 3.2). In this as well as other respects, the Convention follows the approach of documents adopted by the OSCE.

The operative part of the Convention is divided into five sections: (a) provisions which, in a general fashion, stipulate certain fundamental

principles; (b) a catalogue of specific principles and rights; (c) provisions concerning the interpretation and application of the Convention; (d) provisions on the monitoring of its implementation; (e) and the final clauses, which are based on the model final clauses for conventions concluded within the Council of Europe.

Some commentators point out the weaknesses of the Framework Convention. They argue that it is weakly worded and it formulates a number of vaguely defined objectives and principles, the observation of which will be an obligation on the part of the contracting states but not a right which individuals may invoke. Moreover, its implementation machinery is feeble and there is a danger that, in fact, the monitoring procedures may be left entirely to the governments.¹⁸

3. A protocol complementing the European Convention on Human Rights of 1950 in the cultural field by provisions guaranteeing individual rights, in particular for persons belonging to national minorities, has been drafted. It concentrates on cultural rights and not on the rights of minorities in general because of the fact that a number of those rights which are of importance to minorities are already covered by the Human Rights Convention and, in a rough estimation, 80% or so of the remaining rights to be covered are of a cultural nature.

By contrast to the Framework Convention, the additional protocol should set out clearly defined rights which individuals may invoke before independent judiciary organs. According to some observers, since the provisions of the Framework Convention cannot be invoked by any individual, neither before a national court nor before the European Commission or the Court of Human Rights, it is also desirable that at least some of the rights listed in the Convention be included in the protocol.¹⁹

¹⁸ *Report on the Protection of the Rights of National Minorities (Rapporteur: Mr Bindig)*, Parliamentary Assembly, Council of Europe, Doc. 7228, Part I and II, Strasbourg, 31 January 1995.

¹⁹ *Ibidem*.

3. Poland's adjustments

3.1. Incorporation of European standards into bilateral treaties

The political and legal standards of the OSCE and Council of Europe for the protection of minorities are becoming a reference point for the solution of minority problems in bilateral relations and are finding their way into bilateral declarations and treaties.

This also applies to Poland and its relations with seven new neighbours: the united Germany, Czech Republic, Slovakia, Ukraine, Belarus, Lithuania and Russian Federation. In all Poland's treaties signed with its neighbours in 1991-1994, and in the political declarations preceding them, provisions relating to national minorities have occupied a prominent place. The question of the rights of minorities has been resolved there on the basis of European standards, OSCE commitments in particular.

During the negotiations the treaty-parties agreed not to look for "special solutions" or separate provisions modelled on the pre-war ideas, but to make the international standards a foundation for resolving minority questions in bilateral relations.

The most extensive and detailed provisions pertaining to minorities were included in the Treaty on Good-Neighbourly Relations and Friendly Cooperation concluded between the Republic of Poland and the Federal Republic of Germany on 17 June 1991. The rights of persons belonging to the German minority in Poland and the Polish group in Germany were given a legal form in three articles of the Treaty (Articles 20-22), which were based on the Copenhagen Document of the OSCE and developed where necessary. In many instances the Copenhagen formulas were simply quoted or referred to.²⁰

The most important congruence between both documents relates to definition of national minorities and exercise of their rights. In the Treaty, like in the Copenhagen Document, not only the origins of a person are taken into consideration in determining membership of minorities, but also

the aspect of "a person's individual choice". This is a point of crucial significance in the context of acknowledging the existence of minorities, since it restricts the possibility of denying members of a minority their rights through negating the very existence of such a minority in the country in question.

As for exercise of rights by persons belonging to national minorities, both the Treaty and the Copenhagen Document clearly prefer the concept of individualized rights, rejecting treatment of minority rights as group rights. However, this does not mean that the specific rights to which members of a minority are entitled cannot be exercised collectively. This opportunity is granted by using the expression "...individually or in community with other members of their group" (Article 20.3).

In general, instead of concentrating on the old-standing controversy and deliberations of "individual versus collective rights" dilemma, the Treaty emphasizes the obligations of the states to protect the minorities concerned.

Numerous further provisions of the Treaty and the Copenhagen Document are very similar. This applies to such specific matters as protection of minorities' identities; their rights to education, association and participation in public affairs; their freedom of religion and freedom of contacts. In the latter case, for example, the relevant provision of the Treaty was exactly quoted from the Copenhagen Document (para. 32.4).

Other provisions of the Treaty were added or developed. For example, unlike the Copenhagen Document, the Treaty includes the right to enjoy, on equal terms with other citizens, effective legal means (remedy) of asserting their rights, in conformity with national legislation. As far as freedom of information is concerned, the Treaty provides that institutions of both minorities will have equal access to the media of their regions.

Such a clause does not exist in the Copenhagen Document.

Like the CSCE Document, the Treaty asserts the right to use the minority language. But apart from the general clause on the subject, the Treaty recognizes additionally the right of members of both minorities to use the mother tongue version of their forenames and surnames. This stipulation exceeds the provisions of the Copenhagen Document.

During the negotiations of the Treaty, Germany was interested in allowing official place-names in traditional locations of German minority settlement to be additionally designated in German. Poland did not agree on this point at that time. A letter of intent from the Polish Foreign Minister

²⁰ For a more detailed confrontation of respective provisions included in both documents, see *Joint Polish-German Report on the Implementation of the Bilateral Treaty of 17 June 1991 regarding the German Minority in Poland and the Polish Group in Germany. Presented at the CSCE Human Dimension Seminar on Case Studies on National Minorities Issues: Positive Results, Warsaw, 24-28 May 1993.*

to the German Foreign Minister, which was appended to the text of the Treaty, said that the Polish government was willing to examine the question of topographical nomenclature "in due time".

Lastly, the key question concerning prohibition of the abuse of rights by persons belonging to national minorities and the obligation of loyalty to the state. Relating to the former issue para. 37 of the Copenhagen Document was literally quoted in the Treaty. In addition, the Treaty states that any member of both minorities shall be required "to behave loyally towards the State concerned, just like any other citizen, and observe the obligations arising out of the legislation of that State" (Article 22.2). Consequently, the country of residence has the right to expect civic loyalty from the members of respective minorities, as from all its citizens.

The "citizenship clause" has been perceived by Poland as a *conditio sine qua non* for the application of European standards on minority protection in the Treaty to the German minority. Bearing in mind the German concept of citizenship, during the negotiations on the Treaty, Poland was looking for guarantees of her political stability and security. The possession of Polish citizenship by persons belonging to the German minority in Poland was seen as a safeguard against possible abuse of their rights.

It is worth adding that although there is no such clause in the Copenhagen Document, the principle of loyalty of members of minorities to their country of residence and citizenship constitutes one of OSCE standards. It was included, among others, in the Report of the Geneva CSCE Meeting of Experts on National Minorities of 19 July 1991 (chapter IV.4). Such an approach is also in conformity with the trend of discussions held within the framework of the Council of Europe on the definition and rights of persons belonging to national minorities.

Other bilateral treaties signed by Poland with its neighbours were also inspired by European instruments and provide very similar guarantees with respect to a set of fundamental rights, as well as the maintenance and development of ethnic, cultural, linguistic and religious identity of national minorities.

3.2. Changes in domestic legislation, institutions and policies

The year 1989 brought an important change in the situation of national minorities in Poland. Democratic authorities recognized that belonging to these groups is a matter of a person's individual choice, and consequently guaranteed exercise of special rights to persons who had taken of that option.

At the same time, Poland has been implementing the standards set out in various multilateral and bilateral instruments signed in the 1990s. The implementation of these international obligations has been accomplished through national legislation and appropriate governmental policies.

The legal adjustments to European standards started as early as after the Round Table debate in the spring of 1989. On the basis of the Law on Association of 7 April 1989, members of national minorities, like other Polish citizens, have acquired the right of association. The Law allows associations to possess their own incomes and signifies a break with the nationalization of social institutions, licensing their activities, etc.

All the minorities have their own associations. There are now about 120 of these, including several umbrella organizations, compared to communist times when there were merely seven. National minorities are also politically active. In the last parliamentary election held on 19 September 1993 there were candidates representing the German, Belarussian and Ukrainian minorities. The first political party to be formed by a national minority was the Belarussian Democratic Union.

But more active participation of national minorities in public affairs began earlier, just after the first semi-democratic parliamentary elections of 4 June 1989. In August 1989, the Committee for National and Ethnic Minorities was established in the newly elected Parliament. It was given, first of all, two ambitious tasks: to work on a bill on national minorities and a constitutional provision on protection of minorities. Because of considerable differences of opinion, the Committee eventually decided on regulation of the question of protection of minority rights by means of inclusion of the appropriate clauses in specific statutes.

The issue of introducing a separate law on minorities to the Polish legal system reappeared on the agenda of the parliament elected in October 1991, but the work of the Committee did not lead to the adoption of any final decisions. When the present parliament was elected in September 1993, the Committee recognized that the issue of a law on minorities should be

tackled once again, together with the need to insert a reference in the new Constitution, which has not yet been adopted.²¹

It is expected that the new Constitution, which is presently being drafted, will contain a clause defining the rights of Polish citizens belonging to national minorities.

The participation of minorities in political life is facilitated by electoral law which provides them with some privileges. The electoral law for the parliamentary elections of October 1991 contained provisions for the preferential treatment of candidates representing national minorities. The threshold of signatures required for the registration of those candidates was lowered. As a result, representatives of the German minority entered the Sejm (seven deputies) and the Senate (one senator). A Parliamentary Group of the German Minority was set up.

Under the electoral law enacted on 28 May 1993, before the 19 September parliamentary elections, minorities also enjoyed certain privileges designed to equalize their election chances and help them secure representation in parliament. Apart from granting them some privileges with respect to putting forward their candidates, minority associations could apply to be relieved from the parliamentary threshold of minimum 5% of all the votes nation wide for political parties and 7% for party coalitions. Yet interest among minorities in putting forward their own tickets was not that high. Some of them preferred to place their candidates on large party tickets.²²

At present, the German minority has four deputies of the Sejm and one senator. There is a Parliamentary German Minority Lobby Group. The Ukrainian minority has one representative in the Sejm.

Within the structures of central administration the problems of national minorities were removed from the competence of the Ministry of Internal Affairs and handed over to the Ministry of Culture and Art. In autumn of 1990 a permanent Group for National Minorities was created within the latter Ministry. In April 1992 it was transformed into a separate department, the Office for National Minorities, which in April 1995 was renamed the Office for Culture of National Minorities. Its responsibilities include providing national minorities with financial support for cultural and

publishing activities, legal and administrative assistance, and counteracting infringements on the rights of minorities.²³

A huge increase in the number of publications produced by national minorities has taken place. Fifteen periodicals are sponsored by the state, including the "Hoffnung" bi-weekly, "Schlesisches Wochenblatt" weekly and "Masurische Storchenpost" monthly. These are publications issued in the language of the minority or bilingual ones which also contains texts in Polish. Minorities also have access to public radio channels. Programs in minority languages are broadcasted by local radio stations operating in regions with large German, Ukrainian, Belarussian and Lithuanian minority populations. On television there are special programs devoted to national minority affairs, such as the German-speaking "Oberschlesien Journal".

The Polish education system has been opened to the needs of national minorities. The Educational System Law of 7 September 1991 reads as follows: "public school renders possible to its students to preserve their national, ethnic, linguistic, and religious identity, and in particular to learn their mother tongue and their own history and culture" (Article 13).

The ordinance of the Minister of National Education of 24 March 1992 developed this statutory provision and greatly extended the "special rights" of minorities in the field of education. Conditions for instruction in their mother tongue or the additional instruction of their mother tongue in kindergartens and vocational schools were created. It became possible to organize classes for smaller groups of children: instruction in a mother tongue other than Polish is provided if it is requested by at least seven children in a primary school and fourteen in a school of a higher level. Bilingual school certificates were introduced, etc.

The scope of native language teaching varies from one school to another; in some it is the language of instruction, in others an extra. There has been a steady rise in the number of pupils in such schools. Expansion of this type of education has been particularly dynamic in regions inhabited by the German minority. In the school year 1994/95, for instance, 6,152 pupils were taught German as a mother tongue.²⁴ In addition to the primary and secondary education facilities, there are university departments of German, Ukrainian, Belarussian, Lithuanian and other studies.

²¹ See S. Podemski, "Prawo mniejszości", *Polityka*, 23 October 1993.

²² More on this, see an interview with E. Wierzycka of the Helsinki Human Rights Foundation in *The Warsaw Voice*, 5 September 1993.

²³ See *Mniejszości narodowe w Polsce w 1993 r. Biuletyn Biura ds. Mniejszości Narodowych przy Ministerstwie Kultury i Sztuki*, Warszawa 1994.

²⁴ Information provided by the Office for Culture of National Minorities.

Drawing to a close of this brief overview of legal and institutional adjustments one should add that, in 1992, a special Plenipotentiary of the head of province in the Opole voivodship to deal with the problems of minorities was appointed. This province is the most important region in terms of settlement of the German minority in Poland. This was followed by the nomination of the same plenipotentiary in the Olsztyn voivodship. It is worth stressing that creation of such posts has been declared in the Polish Foreign Minister's letter of intent to his German counterpart on the occasion of signature of the Polish-German Treaty of 1991.

To summarize, by and large, there are now no political or legal barriers in Poland standing in the way of the development of the ethnic, cultural, linguistic or religious identities of its national minorities. However, despite all the mentioned positive developments, critical remarks on the protection of the rights of national minorities in Poland are being made.²⁵

In particular, one can argue that the linguistic rights of minorities do not receive proper protection. The still binding decree on the official language and the working language of the central and local administration of 30 November 1945 provides for no exceptions to the general rule of exclusive use of the Polish language in this sphere. This is a difficult problem for communes where members of a national minority constitute a decisive majority of the population, such as Pusk with its 90% of Lithuanians.

Some complaints are related to the incoherence of activities in the relations between the central and local authorities. The latter are often, according to representatives of minorities' organizations, too rigid, mistrustful and reserved in their approach to national minorities. Stress is put on proper implementation of the legislative solution issued after 1989.

It is also worth noting that on the national level the minorities lack an appropriate partner to negotiate with. In September 1990, the Commission for National Minorities, a consultative and advisory governmental agency composed of seven ministers and four heads of provinces, was appointed. Unfortunately, its activities proved almost non-existent in practice. This body met several times, but no program of actions for national minorities was ever developed.

²⁵ More on this point, see *Some Remarks on National Minorities in Poland: The Protection of Their Rights, Achievements and Failures*. Helsinki Foundation for Human Rights, Warsaw, May 1993.

Specific and relatively most serious complaints against the authorities are made by representatives of the German minority in Poland, which will be discussed in the next section.

4. The role of Germany

For a long time, the question of the German minority in Poland occupied a prominent place not only in bilateral relations between the FRG and Poland, but also in the Federal Republic's "Ostpolitik", alongside such fundamental concerns as reunification, termination of the division of Europe or Polish-German reconciliation. This became the case especially in the late 1980s and early 1990s, in the wake of the fall of communism and during the first period of the democratic transformation in Poland.²⁶

4.1. Evolution of the Federal Republic's influences

During the 1980s, West Germany demonstrated its mounting concern for the fate and status of persons of ethnic German origin living in Poland. It pressed for easier emigration, access to school instruction and religious services in German, etc. First of all, however, West German politicians demanded official recognition by the Polish Government that a German minority does exist and should have the right to cultivate its own identity.²⁷

The issue also became one of the main demands of the organizations of German expellees in the Federal Republic. They stood by the highly debatable estimate of 1.1 million German living in Poland and stressed the need to make economic assistance to Poland contingent on protection of minority rights. This was often linked to slogans that negated the German borders established after World War II. The fact that the Federal Republic

²⁶ In a statement to the Bundestag on 15 November 1990, Chancellor H. Kohl called the question of the German minority in Poland the "core" of the prospective treaty on good-neighbourly relations between the two countries. Much earlier, in 1986, in a speech made by Internal Minister F. Zimmerman a frank airing of this problem was made a condition for financial aid and subsequently even a possible visit by H. Kohl to Poland. See more on this J. Kosiarski, "The German Minority...", *op.cit.*

²⁷ Chancellor H. Kohl, at a gathering of the Silesian Landsmannschaft in Hannover on 16 June 1985, said: "I assure you that the Federal Government will continue to insist on our compatriots being given the opportunity to emigrate and to be reunited with their families if they so wish. Those who wish to remain in their homeland have a right to their cultural distinctiveness and to develop and foster our language and our customs." See M. Góralski, J. Barcz, *Dylematy polityki wschodniej Republiki Federalnej Niemiec 1982-1985*, Warszawa 1987, p. 171.

perpetuated the fiction of the Reich as still existing *de jure* within its 1937 borders did not weaken suspicions felt by the Poles.²⁸

The Polish authorities consistently refused to grant national minority rights to those claiming to be of German descent. West German claims that a German minority existed were dismissed as part of a political doctrine aimed at destabilizing Polish society and justifying the idea of the character of Poland's western border being provisional. It was also emphasized that West German claims stemmed from the Federal Republic's particular concept of nationality and citizenship.

In the meantime, a position differing from the official line was adopted by some representatives of the Polish democratic opposition, who accused the Government of failing to use diplomatic channels to clarify Bonn's intentions. In this context, it is worth noting that the attitude of the Polish Catholic Church towards the question of the German minority was mostly not to West German liking. For example, Cardinal J. Glemp, the Primate of Poland, opposed the idea of organizing services in German for "artificial foreigners" in Silesia.

In the 1980s, the attempts of West German politicians to elevate the problem of German minority into an issue of contention in bilateral relations with Poland was paralleled by the rise of a movement for national emancipation among the minority itself, chiefly in Silesia. A variety of initiatives were developed with the aim of drawing attention to the need for recognition and protection of national rights.

The Federal Republic supported this ethnic revival and pro-German sentiments, but in the late 1980s it decided to stem the rising tide of immigrants from Poland, who used national or territorial justifications for getting West German citizenship. Between 1980 and 1988, about 382,000 immigrants from Poland obtained German citizenship under Article 116 of the Basic Law of the Federal Republic, which states that "a German is anyone possessing German nationality". In practice, this applies also to the

²⁸ The FRG legal and political position on the Polish-German boundary has evolved slowly during the whole post-war period. In the 1950s and 1960s the West German authorities did not recognize it openly (e.g. Chancellor K. Adenauer before the Bundestag on 20 October 1953: "The German nation will never acknowledge the so-called border on the Oder and Neisse."). In the Treaty on the Bases of Normalization of Relations between the Polish People's Republic and the FRG signed on 7 December 1970 both countries decided to "confirm the inviolability of their existing borders, now and in the future, and mutually commit themselves to unconditionally respect their territorial integrity." However, various doubts and controversies remained. For instance, a statement by the Federal Constitutional Tribunal of 7 July 1975 limited the decisions of the treaty to abstaining from resorting to force in relation to the border. An end to all doubts about its legal status was eventually put in the Treaty between the Republic of Poland and the FRG on the Confirmation of the Border Existing between Them of 14 November 1990.

entire indigenous Polish population of western and northern territories transferred from Germany to Poland in 1945. At the turn of the 1980s this movement of people became even stronger.²⁹

Numerous internal difficulties connected with increasing exodus of ethnic Germans from Poland and other Central and East European countries, later on also from East Germany, modified the position of the West German authorities. Their attitude towards resettlers changed. The necessity of providing the newcomers with housing, employment, special welfare benefits etc. led them to promises of efforts to improve the conditions for Germans living in Poland and pledges of financial support for various attempts to revive German culture in Silesia.

First, in the autumn of 1989 the existence of a German minority in Poland ceased to be officially questioned, while there was still controversy over the legal regulation of its status. The breakthrough came during Chancellor H. Kohl's visit to Poland in November, when a Joint Declaration was adopted.³⁰ The *de facto* recognition of a German minority in Poland acted as a spur to the activism of its representatives. The first minority organization, the Socio-Cultural Society of the Population of German Stock of Katowice Voivodship, based in Gliwice, was registered by court in January 1990. At present, there are some 60 such associations. The Polish authorities have stressed the principle of loyalty to the state as a basis of the government's policy towards the German minority. At the same time, Poland deprecated attempts at linkage between guarantees of German minority rights and a treaty on borders, while many German politicians tied conclusion of a frontier accord to treaty-based guarantees of the rights of the German minority. Poland and Germany eventually removed any lingering ambiguities about the Oder-Neisse frontier through conclusion of a treaty on 14 November 1990 expressly confirming its definitive status. Only after that, the relevant provisions on the rights of national minorities were included in the Treaty on Good-Neighbourly Relations and Friendly Cooperation of June 1991.

²⁹ In the 1970s citizens of German origin left Poland at a rate of more than 10,000 a year. In the 1980s a true exodus took place: each year, from 50,000 to 100,000 people would leave Poland. In 1989, 250,000 ethnic Germans left the country. In 1991, the figure stood at 40,000, and in 1992 under 20,000 (see *The Warsaw Voice*, 20-27 December 1992).

³⁰ Para. 45 of the Declaration stated: "Both Parties will make it possible for persons and population groups of Polish and German extraction or persons identifying with the language, culture or tradition of other Party to preserve and develop their cultural identity" (*Gazeta Wyborcza*, 15 November 1989).

It is worth noting, however, that the term "national minority" is used in the Treaty only with respect to the German minority in Poland. The Polish group in Germany is referred to as "persons living in the Federal Republic of Germany, holders of German citizenship, who are of Polish origin or identify with the Polish language, culture or tradition".³¹

This terminological asymmetry has given rise to concerns about the alleged lack of symmetry in rights, duties and obligations concerning Poles in Germany and Germans in Poland.³² The doubts have been voiced that one of the consequences would be that only Poland is bound by other instruments on the protection of national minorities in the treatment of the German minority, whereas Germany, in the treatment of the Polish group, is bound only by the Treaty.³³ During the ratification debate on the Treaty in the Polish Parliament in December 1991, some politicians tried to point out that it favours the German minority.³⁴ The prevailing interpretation is, however, that according to the Treaty, both minorities and "equivalent groups" do enjoy the same rights. Thus, in spite of the lack of the qualification of the Polish group in Germany explicit in the Treaty as a national minority, it should be protected as such.³⁵

Since 1990, the Government of the Federal Republic has been supporting financially the German minority in Poland in various fields, such as

³¹ Thus, the formal acknowledgement of the existence of German minority in Poland has no parallel as far as the acknowledgement of the existence of Polish minority in Germany. In the Federal Republic of Germany only Danish, Sorbian and Frisian ethnic groups have the legal status of recognized national minorities. Each of them is estimated at approximately 50,000. Other ethnic groups living in Germany for shorter periods of time and much more dispersed throughout the country, including the 4.5 million population of "guest workers" and their dependents, are treated as foreigners. According to official German statistics, there are around 290,000 Poles living in the Federal Republic. It is estimated, however, that Polish speaking population in Germany amounts to as many as 1.5-2.0 mln people. This group is very differentiated in terms of both legal and real status.

³² See, for example, E. Cziomer, *Uwarunkowania i nowe problemy stosunków polsko-niemieckich w latach 90-tych (ekspertyza)*, 1994, pp. 16-17.

³³ See R. Jasica, "Polish-German Treaties of 1990 and 1991 on the Confirmation of their Mutual Border and on Good Neighbourliness and Friendly Co-operation", *Polish Yearbook of International Law*, 1991-1992, vol. XIX, pp. 81-82.

³⁴ Replying to these complaints, Foreign Minister K. Skubiszewski argued that the Treaty was formulated as a compromise between legal possibilities and practical requirements. Senator A. Szczypiorski commented that Poles now living in Germany do not consider themselves to be a minority.

³⁵ Moreover, one can argue that if the notion of the Polish minority had been introduced into the Treaty, the protection would have probably been restricted only to the small group of so-called Ruhr-Poles, sometimes recognized in Germany as "linguistic minority". And other, more significant groups of persons of Polish extraction living in Germany would have been deprived any protection. Meanwhile, according to its present provisions, the Treaty guarantees the protection to all categories of Polish groups, including to some extent even people not having German citizenship, e.g. migrant workers. More on this see J. Barcz, *Poland and its Bilateral Treaties* (manuscript), 1995.

(1) community building: equipment and support of meeting centers, clubs and associations;

(2) culture and media: language training, assignment of teachers teaching German as native language to Polish schools, scholarships, assistance of media;

(3) economic and social sector: provision of medical and other equipment as well as urgently needed material for hospitals, creation of welfare centers for old and sick people.

The Polish Government is being informed about the various programs of assistance.³⁶ It is worth stressing that these projects, as a rule, benefit not only members of the German minority and are intended to help improve the infrastructure in whole regions. However, there are also some forms of financial and technical assistance which have been offered exclusively to persons belonging to the German minority. This includes social benefits for the aged and disabled people (*Lebensunterhalt*), or salaries for functionaries of the minority organizations.

4.2. Problems and tensions

The new situation of the German minority in Poland creates also some problems and tensions. No doubt the vast majority of persons belonging to this minority behaves with civic loyalty towards the Polish state. The German caucus in the parliament acted with great responsibility in many situations.³⁷ However, there are also still problems like the influence of radical tendencies and of nationalistic attitudes which give rise to concern.

At the same time, many Poles in Silesia remain distrustful of the German community, who they say are claiming German origin en masse in hope for economic profits. From time to time fears surface among the Polish public that recognition of the existence of the German minority may open the way for the birth of a new "fifth column". The opinions are expressed that leaders of the German associations are not decisive enough in distancing themselves from the extremists, including those acting in the

³⁶ All in all, according to information received in the Polish Foreign Ministry, this aid amounted to around 46 million DM in 1993. While the FRG Foreign Ministry covers expenses on culture and education, the Ministry of Interior deals with social assistance.

³⁷ Though, according to B. Berdychowska, director of the Office for National Minorities, the German deputies do a lot better in the Sejm than back in Opole" (an interview with her in *The Warsaw Post*, 27 June 1993).



expellees organizations in Germany. Thus, the question of loyalty to the state seems to be essential for forming and taking attitudes towards the German minority.

This was particularly apparent during the years 1990-1991, when both Polish-German treaties were negotiated. The situation was aggravated by some Silesians in Germany, who still hoped Silesia will become part of Germany and whose organizations, like the Union of Expellees (BdV), are subsidized by the German authorities. In 1990 for example, Hartmut Koschyk, the secretary-general of the Union, called on the Federal Republic to secure a clearly privileged status and special rights for the Germans in Opole Silesia. He demanded facilitation of settlement in this region by descendants of its former inhabitants. He wanted the Silesia question to be internationalized and the territories along the Oder and Neisse rivers incorporated into the EEC economic area.

Some of these radical claims have proved to be of a strong influence on the attitudes and outlooks of many representatives of the German minority in Poland. The Central Council of German Associations in the Republic of Poland, established on 15 September 1990, asked both governments to confer dual nationality on Germans domiciled in Poland. In a special memorandum it demanded, among other things, legal protection by the Federal Republic and closer cooperation between German organizations in Poland and the refugee associations in Germany.

Despite the many measures taken by the Polish authorities in recent years, representatives of the German minority have put forward a number of claims which, in their opinion, still need to be satisfied. Their major complaints concern ill will on the level of local government.³⁸ Apart from certain matters of individual nature, there are also requests of a more general character, such as

- guarantees of the right to return to Poland and purchase real estate for former Polish citizens of German origin;
- the right to form minority-based political parties;
- introduction of the use of bilingual versions of the names of localities in which the German minority dominates;

³⁸ H. Kroll, chairman of the German Minority's Parliamentary Caucus, said in an interview: "We have particularly painful relations with the authorities in Opole province. Starting with general matters, this shows itself in the one-sided interpretation of the Polish-German Treaty: not respecting our right to tradition, to have our own schools, and so on". See *The Warsaw Voice*, 18 July 1993.

- the right to use the mother tongue in official contacts or even recognition of German as a second official language in areas with a minority population;

- a petition that persons forcibly drafted into the Wehrmacht be entitled to include these years of service in their entitlement to retirement pension rights;

- claims that relevant provisions of the Polish-German Treaty are inadequate and require revision;

- calls for changes in the status of Opole Silesia and agitation for a plebiscite and autonomy.³⁹

Also, the question of dual citizenship for Poles of German origin is raised and remains one of the most politically sensitive issues. It proved to be the biggest sticking-point in the negotiation of the Polish-German Treaty of June 1991. The issue was finally omitted in the accord, although the refugee organizations in Germany had tried to affect the results of the negotiations on this point. Like some representatives of the German minority, they were in favour of investing members of the minority with dual citizenship.

Poland has not recognized formally any claim to second citizenship by ethnic Germans provided by the German law on nationality. In practice, however, such persons may be treated in the Federal Republic as German nationals and are entitled to apply to the German Embassy in Warsaw for a German passport. Consequently, they enjoy a special situation which clearly marks them out from other minority groups in Poland. It is estimated that only in Opole Silesia around 60,000 inhabitants have dual citizenship, that is both Polish and German.⁴⁰

There are also some other reasons which generate among the Poles much emotions, and even suspicion about the German minority's desire to break away from Poland and join Germany. One of the objections is that young male members of the minority avoid military service in the Polish Army going to the Federal Republic for prolonged periods of time.⁴¹

³⁹ As an example one may note demands presented by the National Offensive, a German revisionist organization, whose members settled in the village of Dziewkowice in Opole region. According to this organization, Silesia should gain autonomy and this would be its first step toward incorporation into Germany. See *The Warsaw Voice*, 15 November 1992.

⁴⁰ See *Rzeczpospolita*, 19 June 1995.

⁴¹ According to the local authorities of Opole region, in the places inhabited by holders of German passports only 15% of young people appear before military drafting commissions, compared with 98%, on average, in other voivodships. See *Gazeta Wyborcza*, 13 July 1995.

Renovation of the existing and construction of new memorials of Germans fallen in both World Wars led to tensions between the central authorities and the German minority late in 1992 and early in 1993. Some radical declarations and actions at that time provoked even President L. Walesa to issue a special statement which called on the German minority to respect Polish law and warned that all signs of national chauvinism would be dealt with.⁴²

On the other hand, some of the organizations of members of the German minority specifically define their principal objective as the building of a bridge between the Polish and the German nation. An example of such an organization is the German "Reconciliation and Future" Working Community operating mainly in the Katowice voivodship, which strongly stresses its efforts to establish a non-conflicting co-existence with the Polish majority. "Our primary political goal is to further reconciliation between both nations," said D. Brehmer, chairman of this organization.⁴³

This way of thinking is also shared and supported by various non-governmental German organizations operating in Poland, charitable and political foundations among others. For instance, the Konrad Adenauer Foundation (KAS), which was established in Poland in 1989, defines its basic tasks threefold: helping Poland with European integration, intensifying contacts in bilateral areas, and creating possibilities for the German minority in the country. From the Foundation's perspective, the latter is perceived as a "translator" for the Federal Republic in developing mutual relations and as a "catalyst" which might speed up the Europeanization of Poland.⁴⁴

Conclusions

The policy of the Polish state towards national minorities underwent a profound reappraisal at the beginning of the 1990s. Though this reevaluation was part of the general process of political transformations in

⁴² See *The Warsaw Voice*, 20-27 December 1992; G. Bartodziej, "Pytania bez odpowiedzi", *Polityka*, 9 January 1993.

⁴³ See an interview given by him to *The Warsaw Voice*, 4 April 1993. It is interesting that, in the same interview, he criticized the Polish-German Treaty of 1991 as being discriminatory for Poland. "It overlooks the status of Poles in Germany," he said.

⁴⁴ See an interview with G. Thieme, head of the KAS in Warsaw, in *The Warsaw Voice*, 4 July 1993.

the country, an important role was also played by Poland's international commitments concerning protection of the rights of minorities.

On the one hand, these commitments spring mainly from OSCE documents and are of a political nature. One can argue, however, that the political authority of the OSCE standards in this field is in a process of developing into a regional customary international law.⁴⁵ On the other hand, of considerable scope, too, are Poland's treaty-based obligations arising from bilateral treaties concluded with neighbouring countries.⁴⁶ The most-far-reaching as regards the minority rights are the provisions of the treaty with Germany. The Treaty was supplemented by the contents of a letter of intentions of the Foreign Ministers concerning minorities -- a solution unparalleled in the agreements with other states.

In turn, these international obligations and other foreign influences have contributed to a strengthening of the sense of national identity of persons belonging to ethnic minorities and to an immense revival of their political, social and cultural activism. Legal and institutional basis for the protection of the rights of national minorities has been created. A big number of their cultural, educational and religious organizations have been registered. Instruction in mother tongues in many schools has developed, periodicals in minority languages are published. Persons belonging to national minorities are represented in the local governments of numerous communes. They have their own mayors and bailiffs. The German minority has its representation in the parliament.

For years the issue of national minorities was a source of friction in relations between Poland and Germany. Only in 1989 did the Polish authorities recognize officially the existence of a big German community in Poland. Since then, it has significantly consolidated its position in public life.

It remains to be seen whether the position of the German minority in Poland will be further consolidated -- along with the processes of Polish-German rapprochement and of all-European integration. A great deal will also depend on domestic politics in Poland -- for example, on a

⁴⁵ See J. Barez, "Poland and its...", *op.cit.*

⁴⁶ This pattern of influence of bilateral agreements on more detailed domestic minorities legislation appeared several times in post-war European history. The good examples are: the Gruber - de Gasperi Pact of 1946, which seeks to protect the German-speaking minority in Italy, and the 1955 Declaration of Bonn and Copenhagen on the protection of Danish and German minorities in Germany and Denmark respectively.

hypothetical radicalization of the German minority's demands or a possible expansion of Polish nationalistic organizations, which might play on revival of anti-German reminiscences and prejudices.

It would also be premature to argue that the present citizenship and minorities laws in Poland are being shaped under a dominant influence of, or just follow, the German model. Although both German and Polish laws and practices are inspired by "Eastern" rather than "Western" type of national ideology, their concepts of nationality, as well as historical circumstances under which both nations shaped, differ in many respects. The Polish nation arose in the 19th century in conflict with the imperial states which, as a rule were ethnically oppressive, while the German nation developed in very close connection with the creation and strengthening of its united state. Unlike in Germany, however, ethnic origin is not the test for enjoying full citizenship rights in Poland.