

Ethnic Minority Protection and Anti-discrimination in Central Europe

Before and After EU Accession: the Case of Poland

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Abstract

This article explores key policy developments regarding ethnic minority protection and anti-discrimination in contemporary Poland. More specifically, it examines the relationship between domestic policy formation and the European context. Before 2004, the European Union applied membership conditionality in order to attempt to stimulate candidate member states in post-communist Central Europe to adopt special minority protection measures. As a result, most of these countries turned to the official recognition of the ethnic specificity of minority groups and the acceptance of group-related cultural entitlements, not only as norms in their own right but also as the basis for a policy of stimulating ethnocultural diversity. Since the EU enlargement of 2004, however, European attempts to stimulate ethnocultural diversity in the new member states have been less focused on group-related rights but have emphasized the themes of social inclusion, anti-discrimination and equal opportunities. I explore how, in this new European context, Polish policies on ethnic minority protection have developed. Through a comparison of dominant Polish perceptions of minority protection issues with dominant discourses about the preservation of ethnic diversity promoted by EU institutions, this article shows the linkages between recent developments in Polish minority policy-making and the current European initiatives in this field. It also shows important points of disjuncture between the way in which European institutions have framed issues of ethnocultural diversity and the way in which Polish policy-makers have worked out minority protection.

I. Introduction

Ethnic and nationalist politics in contemporary Poland—regardless of whether it concerns attempts to protect ethnic minority citizens or efforts to invoke the Polish nation as a homogenous ethnic community—takes place against the background of a complex and often traumatic history. The brutal ethnic homogenization campaigns that were carried out during World War II, the border shifts and population movements in the immediate post-war period and the frequent use of nationalist rhetoric in the propaganda of the Polish United Workers' Party (Polska Zjednoczona Partia Robotnicza, PZPR) during the communist period are some of the important legacies from the twentieth century that have profoundly influenced the ways in which issues of ethnic diversity are being interpreted, experienced and politically expressed in Poland today. Also, recent international changes have brought issues of ethnic and national belonging to a more prominent place in domestic Polish politics and policy making. In the 1990s, the EU actively stimulated Polish policy makers to introduce policies in the field of ethnic and national minority protection. Since the 1990s, a growing influx to Poland of seasonal workers or temporary migrants from the east has prompted the Polish media, scholars and politicians to start to think about the impact of such changes in the economy on

issues of ethnic diversity. In this essay, I focus on the question of how recent policies on the protection of ethnic and national minorities in Poland have been influenced by some of these different legacies and political contexts.

The article consists of three sections. In the first, I explain my choice to focus on Poland. Why should policy developments in the field of minority protection and ethnocultural diversity in Poland be a topic of scholarly interest? Poland is often seen as a country where ethnic diversity should not be an issue of much political dispute or societal distress. I will argue, however, that—even though minority groups in Poland have been small in numbers—there are several reasons why issues of ethnic, linguistic and religious diversity in this country have remained both crucial and controversial.

In the second section of the article, I examine how Poland's minority protection policies have developed over the last decade and a half. I describe the country's legislative framework and institutional structures of minority protection and explore some of the debates that have led to the establishment and the functioning of these legal frameworks and institutions.

In the third section of the article, I discuss the influence of Poland's accession to the EU on Polish policy-making narratives regarding minority protection. Before 2004, the EU applied membership conditionality in order to attempt to stimulate candidate member states in Central Europe to adopt special minority protection measures. As a result, there was a trend in these countries to turn to the official recognition of the ethnic specificity of minority groups and the acceptance of group-related cultural entitlements, not only as norms in their own right but also as the basis for a policy of stimulating ethnocultural diversity. Since the enlargement of 2004, however, conditionality policy on minority protection had to be abandoned and, instead, European attempts to stimulate ethnocultural diversity in the new member states have emphasized the themes of social inclusion, anti-discrimination and equal opportunities. I explore elements of conjuncture and disjuncture between this changing European context and the domestic agendas underpinning policy formation on ethnic minority protection in Poland.

II. Ethnopolitics in a Homogenized Country

In 2002, Poland held a census that, for the first time since 1921, allowed its citizens to indicate their ethnic nationality (*narodowość*). In this census, 3.26% of the respondents (1,246,400 people) did not identify themselves as ethnic Poles: 471,500 of them (1.23% of all respondents) indicated the name of the non-Polish ethnic group under which they wanted to

be grouped. On the basis of these results, the census identified the Silesians (172,682), the Germans (147,094), the Belarusians (47,640) and the Ukrainians (27,172) as the four largest non-Polish groups in the country.¹ These and other results from the census have been far from uncontested. Some minority activists have argued that the minority numbers are too low. According to the census results, minorities in Poland make up about 1% of the total population but both official estimates and figures compiled by minority organizations have provided total figures of 2.2% to 5.1%. Other activists have been displeased with the fact that certain categories in the census were not officially recognized as national or ethnic minority groups. The case of the Silesians is interesting: although 172,682 citizens referred to their nationality as ‘Silesian’ in the census, the Polish authorities did not regard the Silesians as a separate minority group.²

Disputes about how to categorize, define, recognize and count minority groups are not unique to Poland, they are a characteristic of census politics in most places where census taking includes the possibility to register ethnic affiliation.³ Censuses are often important focal points for heightened ethnic minority or nationalist mobilization because, through the official character of the counting, censuses can “nominate” particular ethnic groups “into existence”. A lack of administrative recognition and state certification of certain categories, on the other hand, can make other groups “disappear”.⁴

The fact that the 2002 census in Poland and its results have been contested is therefore in itself not necessarily evidence of the fact that discussions about ethnic diversity in Poland have more than only marginal impact on current Polish domestic politics and policy-making debates. At first sight, one could easily discard discussions about ethnic politics in Poland as

¹ See, for example, Lucjan Adamczuk and Sławomir Łodziński (eds.), *Mniejszości narodowe w świetle narodowego spisu powszechnego z 2002 roku* (WN Scholar, Warszawa, 2006).

² Sławomir Łodziński, “Trauma i władza liczb. Wybrane problemy społecznego odbioru pytania o ‘narodowość’ w narodowym spisie powszechnym z 2002 roku”, in *ibid.*, 171–208. The 2003 report of the Polish statistical office called groups such as the Germans, Belarusians and Ukrainians ‘nationalities’ (*narodowości*). Groups that have no external homeland, such as the Silesians and the Roma, were defined as ‘communities’ (*społeczności*). Główny Urząd Statystyczny, *Narodowy spis powszechny ludności i mieszkańców. Raport z wyników* (GUS, Warszawa, 2003), 39. However, while the official list of minorities published by the Ministry of the Interior included the Roma, it did not mention the Silesians. See <http://www.mswia.gov.pl/index.php?dzial=61&id=37>. The 2005 Minorities Law (see below) followed this logic: the Roma, the Karaites and the Łemkos were recognized as ‘ethnic’ minorities (*mniejszości etniczne*) because they have no external homeland. Recognized groups with an external homeland were called ‘national’ minorities (*mniejszości narodowe*). Despite protest from Silesian mobilizers, the Silesians were recognized neither as a national nor as an ethnic minority.

³ See, for example, David Kertzer and Dominique Arel (eds.), *Census and Identity: the Politics of Race, Ethnicity, and Language in National Censuses* (Cambridge University Press, Cambridge, 2002).

⁴ David Goldberg, *Racial Subjects* (Routledge, New York, 1997), 29.

unimportant. Poland has no large and well-organized minority groups; minority mobilizers are not strongly supported by external homelands; and Poland has not had a history of massive immigration. Poland is rather known as a country that is relatively ethnically homogenous, a fact that results from a recent history of political practices that were deliberately targeted at making the boundaries of the state congruent with those of the nation.

It is, however, precisely this turbulent history of top-down nationalization—the making of the Polish state congruent with the Polish nation—that has left a strong imprint on ethnopolitics in the country today. Although Poland is not often associated with ethnic violence, the country has lived through the turmoil of ethnically-framed conflict at various times during the twentieth century, mainly during and after the First and Second World Wars. During these periods, the diverse populations inhabiting the country’s changing territory were subject to a broad range of ‘difference-eliminating’ strategies employed by different political regimes. Military intervention, (civil) war and diplomatic bargaining moved state borders; deportation and mass killing of ethnically defined groups ‘unmixed’ the population; and deliberate policies of cultural or linguistic homogenization further nationalized it. These actions were sometimes organized on a massive scale, often brutal and always traumatizing. In about any current discussion between minority activists and Polish state representatives, one hears echoes of mutual recriminations about these episodes of strong nationalization.

Jewish–Polish relations in Poland today, for example, are not solely about the current political and social situation of the small Jewish minority (1,055 people in the 2002 census identified themselves as Jewish; official estimates mention the number of 10,000)⁵ but also—and perhaps even more—about issues of responsibility with regard to the role of the Polish authorities and ordinary citizens during the Holocaust and in the post-war period. Unsurprisingly, Jewish minority leaders in Poland today demand protective measures and financial support for their culture, not only because they seek to maintain their position as a minority in the current political and social context but also because they demand official recognition of and compensation for the past injustices inflicted upon them or their families. One could situate the recent work by Jan T. Gross,⁶ who studied Polish responsibilities during the Jedwabne and Kielce pogroms and also researched more hidden forms of anti-Semitism in

⁵ See Lech M. Nijakowski and Sławomir Łodziński (eds.), *Mniejszości narodowe i etniczne w Polsce. Informator 2003* (Komisja Mniejszości Narodowych i Etnicznych Sejmu RP, Wydawnictwo Sejmowe, Warszawa, 2003), 39–42.

⁶ Jan Tomasz Gross, *Neighbors: The Destruction of the Jewish Community in Jedwabne, Poland* (Princeton University Press, Princeton, 2001); and *id.*, *Fear: Anti-Semitism in Poland after Auschwitz* (Random House, New York, 2006).

Poland during and after the Second World War, in this current attempt of Jewish activists to point to the burdened past of Polish–Jewish relations and to urge the Polish government to take on the task of initiating a process of reconciliation. Such processes of reconciliation were as good as impossible before the 1990s because during the communist period there had also been instances of state-directed anti-Semitism. In particular, in the latter half of the 1960s, Polish Communist power-holders found out that speaking of a Jewish internal enemy was a very effective discursive tool for linking their own claim to power with what they framed to be the ‘true’ interests of the Polish nation. As a result of a very blunt and aggressive anti-Semitism campaign in March 1968, thousands of people were dismissed from their jobs—mostly employees from government institutions, university professors and journalists—and thousands saw themselves forced to emigrate. The PZPR mobilized particular groups of intellectuals and workers to protest against ‘the Zionists’ so as to give the impression that this was a policy move that was spontaneously embraced by large sections of the ‘ordinary’ Polish population.⁷

For other ethnic minorities, too, the communist period and the Communists’ strategies to maintain power had left a strong imprint on their current political action. From the very beginning of one-party rule, the Polish Communists were active in constructing the idea that they had been the architects of the Polish national state. In reality, post-war rulers in Poland merely tried to benefit from a changed international environment and acted upon the way the post-war European map had been redrawn as the result of a geopolitical decision by Churchill, Roosevelt and Stalin. By affirming the Curzon line as Poland’s eastern border and the Oder and Neisse rivers as its western one, the borders of Poland were placed in such a way that it made cultural, linguistic and ethnic conceptions of the Polish nation easier to imagine.

This homogeneity could also more easily be proclaimed in a greatly altered demographic context: not only had large parts of the Jewish and Romani populations been murdered during the Holocaust but, after the war, the Soviet Union also introduced a policy of national relocation, forcing about 780,000 Polish-speaking individuals from Soviet Ukraine to move to Poland. The Polish post-war rulers themselves actively helped the process of cultural, linguistic and ethnic homogenization of the new Polish state through large-scale expulsion and forced resettlement operations. Belarusian, Łemko and Ukrainian populations were

⁷ See, for example, Alina Cała, “Mniejszość żydowska”, in Piotr Madajczyk (ed.), *Mniejszości narodowe w Polsce: Państwo i społeczeństwo polskie a mniejszości narodowe w okresach przełomów politycznych* (Instytut Studiów Politycznych Polskiej Akademii Nauk, Warszawa, 1998), 245–298.

removed from the eastern parts of the new Poland and deported to areas outside the new borders. Up to 500,000 people were relocated from Poland to Ukraine in the period from September 1944 to June 1946. Moreover, in 1947, a large-scale forced resettlement operation replaced approximately 140,000 people identified as Ukrainians from the southeastern border zone to the north and the west of Poland in order to assimilate them into the Polish-speaking population (*Ackja Wisła* or ‘Operation Vistula’). Polish Communists saw a chance to garner unprecedented political support by building something that could be called “ethnic communism”.⁸ Before the Second World War, governing and cultural elites actively imagined the Polish nation as formed by a territorial or historical frame of the state; they did not so much define it by linguistic, cultural or ethnic boundaries. After 1945, the Polish nation was increasingly seen and portrayed as a homogenized ethnic, cultural and linguistic community of which the boundaries were (and needed to be) completely congruent with those of the territory of the state.

In sum, even though minorities in Poland are small in numbers and there has been little danger for violent conflict between minority mobilizers and nationalists in recent times, the debate about the protection of ethnic minorities in Poland is a crucial political debate for two reasons. First of all, it is a discussion about past injustices and about the way in which to effectuate reconciliation. Secondly, it is a discussion about how inclusive or exclusive the Polish nation should be ‘imagined’. The view that the Polish nation is mono-ethnic has been quite persuasive to this date and this is obviously a view that can foster discrimination against those who are not considered to be ethnic Poles.

In the current domestic political climate in Poland, this last aspect may be more important than ever. In the autumn of 2005, little more than a year after Poland had become a member of the EU, the parliamentary elections were won by a conservative party called Law and Justice (Prawo i Sprawiedliwość, PiS), which, in its campaign, had depicted its political competitors as enemies of the Polish nation and had pressed for measures to support the patriotic feelings of the Poles and their adherence to Catholicism in order to bring about a full-scale social renewal. Law and Justice, which had been a moderately successful and fairly typical new right-wing party at the parliamentary elections four years earlier, had successfully transformed itself into an offensive and radically nationalist party in the months right before

⁸ See, for example, Timothy Snyder, *The Reconstruction of Nations: Poland, Ukraine, Lithuania, Belarus, 1569–1999* (Yale University Press, New Haven, London, 2003), 202–214; and Marcin Zaremba, *Komunizm, legitymizacja, nacjonalizm: Nacjonalistyczna legitymizacja władzy komunistycznej w Polsce* (Wydawnictwo TRIO, Instytut Studiów Politycznych Polskiej Akademii Nauk, Warszawa, 2001).

the elections of 25 September 2005.⁹ One month later, the Law and Justice candidate for the Polish presidency, Lech Kaczyński, won the run-off in the presidential elections. In April 2006, Law and Justice formed a government with two other conservative parties, Self-defence of the Republic of Poland (Samoobrona Rzeczypospolitej Polskiej, SRP), a party mainly known for its populism and its opposition to Polish EU membership, and the League of Polish Families (Liga Polskich Rodzin, LPR), a party representing the extreme Catholic right. In July 2006, the president's twin brother and leader of Law and Justice, Jarosław Kaczyński, became the prime minister of this new government, thereby creating what Timothy Garton Ash described as “the unusual spectacle of a major European country effectively run by twin brothers who look so nearly identical that it's easy to mistake one for the other”.¹⁰ The accumulation of power in the hands of two brothers is surely an intriguing matter in itself—and quite unique in contemporary democratic Europe—but the more important question undoubtedly is: does the electoral success of nationalist parties pose a threat to the protection of minorities? Or, in other words, have Poland's policies on ethnic minority protection, its legislative framework and its institutional structures, until now been able to foster the acceptance of minority citizens into the Polish nation? Are the institutions and legal frameworks effective enough to secure minority protection even in a political climate in which nationalism has become a prominent feature of the dominant political parties' campaigning and mobilization strategies?

Before we can answer this question, it is important to sketch out briefly the institutional and legal developments in Poland since 1989.

III. Minority Protection in Poland after 1989: a Brief Overview of New Legislation and Institutions

The democratization processes at the end of the 1980s engendered political debate about the rights of minority populations and about what policies and legal frameworks needed to be implemented in order to protect those rights sufficiently. To a great extent, the debate took place in the Parliamentary Commission on National and Ethnic Minorities (Komisja Mniejszości Narodowych i Etnicznych) of the Polish lower house, the Sejm. The first proposals for a comprehensive law on minority protection date back to the early 1990s. They

⁹ Radosław Markowski, “The Polish Elections of 2005: Pure Chaos or a Restructuring of the Party System?”, 29(4) *West European Politics* (2006), 814–832, at 824.

¹⁰ Timothy Garton Ash, “The Twins' New Poland”, 53(2) *New York Review of Books* (2006), 9 February, at http://www.nybooks.com/articles/article-preview?article_id=18678.

were at that time formulated by Jacek Kuroń, a famous dissident activist during communist times, later also minister of social affairs and presidential candidate, who was during the last years of his life a crucial public figure in the fight for social equality and against discrimination. The discussion on the draft law did not so much revolve around legal provisions to forbid discrimination (since these would soon become part of the 1997 constitution) but on the forms of affirmative action that it seemed to make possible. In May 2002, the government refused to adopt the draft law on minority rights, even though it admitted that the legal proposal was a legitimate response to a need resulting from Poland's ratification of the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) (Poland had signed the Convention in 1995 and ratified it in 2000). According to the government, the proposal contained a number of fundamental problems. It was feared, for instance, that minority education would reinforce the isolation of minority pupils. Furthermore, there appeared to be no clarity on the circumstances that mandated a municipality to introduce special protection measures for the public use of minority languages.¹¹

This last issue was one of the crucial points of discussion in the parliamentary debates on this law. Initial drafts of the law had proposed to allow the official use of a minority language in municipal institutions if at least 8% of the local population identified themselves as belonging to a national minority. Later, this quota was first raised to 20% and then to 50%, which would have given such language rights to only five municipalities. The 50% threshold was rejected by the senate. In the final Law on National and Ethnic Minorities and Regional Language, adopted in January 2005 (and now also known as the "Minorities Law"), the quota remained at 20%.¹²

Minority rights protection had been the topic of a political discussion that lasted about 15 years but resulted in a law that would affect only a very small proportion of the Polish citizens. The reasons for such a prolonged discussion were not only related to the difficulty that politicians had with seeing the Polish nation as an ethnically diverse nation (as one journalist observed: "[t]he [minorities] bill provoked heated debate during its consideration by lawmakers, who often used xenophobic and nationalist rhetoric that seemed out of proportion

¹¹ Sławomir Łodziński, "Społeczne problemy polityki wobec mniejszości narodowych w Polsce: Wokół ustawy o mniejszościach narodowych i etnicznych oraz języku regionalnym", in Lech Nijakowski (ed.), *Polityka państwa polskiego wobec mniejszości narodowych i etnicznych* (Wydawnictwo Sejmowe, Warszawa, 2005), 112–134.

¹² Law No. 141, "Ustawa o mniejszościach narodowych i etnicznych oraz o języku regionalnym", *Dziennik Ustaw* (2005), No. 17.

to the actual power held by minorities in this largely mono-ethnic society”)¹³ but also to the hard technicalities of how a national or an ethnic minority should be defined and how the exact content of the minority entitlements should be delineated. Some of the delay was certainly also related to the lack of political will among certain parties to push this law through; some parliamentarians found that there was no need for an extra law since, so they argued, minorities were already sufficiently protected by other laws.

More surprisingly, perhaps, is that also among minority activists there were very different views on the usefulness of an extra law dealing specifically with cultural entitlements such as language protection. For the Ukrainian minority activists, for example, the discussion on the protection of minority mother languages as official languages of communication was pointless. Whether the threshold was set at 50%, 20% or 8%, for the Ukrainian it did not make much of a difference. As a result of the widespread dispersion and forced assimilation of the people who could potentially register as belonging to the Ukrainian minority, the official share of Ukrainians in the total population was nowhere higher than 20%. What Ukrainian minority activists did in this debate, instead of demanding a change in the law proposal, was to point to other issues, to the specific historical circumstances of their case, in order to show that their problems were different from those of other minorities, had to be treated differently and therefore justified the introduction of additional measures. They argued that even general minority regulations would have a disproportionate affect on the Ukrainians because of the effects of policies in the past, such as Operation Vistula. Thus, instead of focusing only on general minority regulations, Ukrainian activists sought to achieve a discussion on the possibility of tailor-made measures, applicable only to their case. Evidence for the presence of this strategy can easily be found in official documents. The reports of the governmental bodies on minority issues as well as the publications of the Union of Ukrainians in Poland (Związek Ukraińców w Polsce, ZUwP) clearly show that Ukrainian minority activists were chiefly concerned with issues that only affected the Ukrainian minority. These were mainly issues relating to past injustices: claims for the restitution of property that once had belonged to Ukrainian organizations, compensation for the people (and the families of the people) who had been imprisoned in the labour camp site in Jaworzno (a former Nazi concentration camp that from 1947 to 1949 was used by the Polish authorities as a detention camp for Ukrainians suspected of cooperation with the Ukrainian Insurgent Army (Ukrainska

¹³ Wojtek Kość, “The 1 Percent Solution”, *Transitions Online*, 8 November 2004, at <http://www.tol.cz/look/TOLrus/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=89&NrSection=1&NrArticle=13051>.

povstanska armiia, UPA)) and symbolic deeds of reconciliation, such as an official pardon for Operation Vistula or the setting up of a monument in Jaworzno. Such demands could not be satisfied by a law on minority protection but required specific policy initiatives. Ukrainian minority activists in Poland demanded such specific actions.¹⁴

Another group of activists who were ambivalent about the value of the Minorities Law were those representing the Roma. Although the Roma have been officially recognized as an ethnic minority and were therefore considered to be protected by the Minorities Law, Romani activists frequently expressed concern about needs other than those for increased protection of the language and culture of their group; they demanded, among other things, material support for housing, measures on poverty alleviation and anti-discrimination. The Polish government responded with a specific programme for the Roma. In August 2003, the Polish government officially adopted a long-term policy project aimed at ‘solving’ the problems facing the Romani community in Poland. This policy plan has since then been carried out by the Ministry of the Interior and has focused on a broad range of topics, including poverty, education, housing, health and employment. The idea behind this programme is to work on the development of Romani ‘culture’ as well as to single the Roma out as a specific target group for financial support in the areas of social policy mentioned above. One of the principles underpinning the programme has been the idea that financial support for Romani cultural expressions and the promotion of the category ‘Roma’ as a name to label an ‘ethnic’ community will challenge existing stereotypes and create more realistic and more positive images of who the Roma are. By formulating this idea, Polish policy makers have followed a trend that has become visible in recent years in other Central European countries. Hungary, the Czech Republic and Slovakia, to give three examples, have in the 1990s developed models of minority protection that allow them to subsidize Romani cultural expressions as well as to fund projects that relate to social issues.¹⁵ The Roma in Poland were, thus, first recognized as a minority but policy makers as well as Romani activists clearly found that the case of the Roma was somewhat different from that of other minority groups and found it appropriate to design social policy measures for this specific group outside the regular

¹⁴ For a fuller treatment of this topic, see Peter Vermeersch, “A Minority at the Border: EU Enlargement and the Ukrainian Minority in Poland”, 21(3) *Eastern European Politics and Societies* (2007), forthcoming.

¹⁵ *Id.*, *The Romani Movement: Minority Politics and Ethnic Mobilization in Contemporary Central Europe* (Berghahn Books, Oxford, New York, 2006).

framework for minority protection. The result now is a policy that links cultural expressions with special social measures.¹⁶

The examples of the Ukrainian and the Romani minority show that in the formation of the Minorities Law a number of decisions had to be made that were far from self-evident. The choice to focus mainly on the protection of culture and language was not only questioned by certain politicians from mainstream parties but also by some minority activists themselves. The important point is, however, that, despite these difficulties, the work on the general Minorities Law continued, even when demands from some minority activists differed considerably from what such a law could guarantee. Arguably, the fact *that* the work on the law continued is for a large part related to the international context in which this legislative work took place.

EU leverage, in particular, was an important factor, since many activists could use references to Poland's EU membership aspirations in their efforts to persuade politicians to continue the work (although some political parties framed the EU conditionality policy on minority protection as a form of infringement on Polish sovereignty). Through the 1993 Copenhagen Criteria, the EU had a powerful tool to pressure candidate member states into making "the respect for and the protection of national minorities" an issue of political priority.¹⁷ Although the minority protection criterion has been called a vague and paradoxical element in the EU's membership conditionality strategy (among other things because it lacks a foundation in EU law),¹⁸ it did persuade Central European governments to adopt a number of international legal documents pertaining to the protection of minority rights, such as the Council of Europe's FCNM and the European Charter for Regional or Minority Languages (EChRML). Poland signed and ratified both documents. Politicians and activists who sought to push the work on a new Polish law on minorities further could subsequently frame Poland's legislative work on a law for minority protection as a moral obligation springing from being a party to these international documents.

¹⁶ On the problems that might result from such a linkage, see *Id.*, "Marginality, Advocacy, and the Ambiguities of Multiculturalism", 12(4) *Identities: Global Studies in Culture and Power* (2005), 451–478.

¹⁷ European Council, "Conclusions of the Presidency", European Council in Copenhagen, 21–22 June 1993, SN 180/1/93 REV 1 EN, 13, at http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/72921.pdf.

¹⁸ Gwendolyn Sasse, "Gone With the Wind? Minority Rights in Central and Eastern Europe Before and After EU Enlargement", paper presented at the Workshop on Ethnic Mobilization in the New Europe, 21–22 April 2006, Brussels.

While the work on the Minorities Law continued in parliament, an institutional structure on the level of government was put into place. These institutions were meant to implement and monitor government policies relating to the protection of minorities. In 1997, an Interdepartmental Group for National Minority Issues was established within the government administration (Międzyresortowy zespół do spraw mniejszości narodowych). Later, the government founded the Division of National Minorities (Wydział mniejszości narodowych) at the Ministry of Interior and Administration (in 2000). The first body incorporated the representatives of various governmental departments. Although it has not included minority representatives, it has organized dialogues and information sessions with prominent activists and representatives of officially recognized minority organizations. The Division of National Minorities, on the other hand, is a purely ministerial body aimed at raising the government's activities in the field of minority protection without opening the official meetings up to minority activists. As a direct result of the new Minorities Law, the government also set up a Joint Commission of the Government and the National and Ethnic Minorities (Komisja Współna Rządu i Mniejszości Narodowych i Etnicznych), which should now function as the main advisory body to the government council and includes minority representatives.¹⁹

When government publications discuss minority issues, they have also pointed to the importance of two other bodies that devote attention to minority issues in a broader context. These are two monitoring institutions: the government's Commissioner for Civil Rights Protection, also known as the Ombudsman (Rzecznik Praw Obywatelski), and the government's Commissioner for the Equal Status of Women and Men (Pełnomocnik do Spraw Równego Statusu Kobiet i Mezczyzn). The latter institution, however, was abolished in November 2005; further on in this article I will return to the question of why and how this happened and what significance it has.

The focus of most of the debates and policy narratives on minority protection in Poland before 2004 were not focused on the governmental institutions that were put in place to monitor equal chances and civil rights but on the Minorities Law and how it would be able to foster minority identities and the preservation of minority cultures. As I have argued, in the run-up to the 2004 EU enlargement, the EU context seems to have been an important factor for turning the Minorities Law into a domestic political priority in Poland. To what extent was it still a priority in the new political climate after EU accession? And have the provisions in the

¹⁹ Articles 23 and 24, Minorities Law.

Minorities Law and the government institutions for minority protection indeed been able to contribute to a better defence of the equal rights of minority citizens, even in a nationalist political climate?

IV. EU Accession and the Effectiveness of Minority Rights Protection and Anti-discrimination Measures in Poland

Since different minority citizens and minority activists in Poland have had different demands and expectations about how the state should protect their interests, it is difficult to decide objectively whether the different Polish government structures and the adopted legal measures have the actual power to satisfy all these demands. What is clear, however, is that, before 2004, the EU's conditionality policy was important in promoting a specific interpretation of minority protection in domestic debates: the interpretation that minority protection is primarily a matter of protecting cultural expressions and identities.

One indication of growing Polish concern for the support for minority cultures and identities before 2004 were the actions of the Polish government to sign (in 1995) and ratify (in 2001) the FCNM. Although the acceptance of this convention is theoretically merely linked to the Council of Europe and not to the EU, the European Commission referred to the value of the FCNM in 1997 and it can therefore be speculated that candidate member states adopted it at that time to strengthen their standing on minority protection issues *vis-à-vis* the European Commission. The EU's technique of membership conditionality generally increased the EU's power in the countries of Central Europe. Although traditionally not a part of the European integration agenda, minority protection was a central rhetorical element in the EU's strategy for eastward enlargement. In the course of the 1990s, the EU member states gradually committed themselves to the principles of human rights protection and anti-discrimination, most notably through the Maastricht and Amsterdam Treaties, although the EU's concern for minority protection in the neighbouring countries of Central and Eastern Europe was clearly much more pronounced than its internal commitment. Already, at the beginning of the 1990s, the desire to contain or prevent ethnic conflict had become part and parcel of the EU's external relations towards the candidate countries in Central Europe. This was, of course, to a great extent the result of the EU's earlier inability to prevent and respond to the acute outbreak of violence in the Balkans and its subsequent fear for the emergence of similar conflict scenarios in other former communist countries. The EU sharply accentuated the role of minority protection in the Copenhagen Criteria for accession, hoping that by so doing it

would be able to maintain political stability throughout the future territory of the EU, especially in areas where ethnic relations were volatile. Although the EU was sometimes accused of using a double standard, it is reasonable to assume that this strategy did change the situation of minority activists in candidate member states. It is also reasonable to assume that it had its influence in areas where there was no immediate danger for a large-scale international conflict involving minorities, such as in Poland.

Poland's record on minority protection was never strongly criticized in the yearly regular reports of the European Commission evaluating candidate countries in their advance towards membership. Nevertheless, there is some evidence suggesting that Polish policy makers were attentive to minority issues in the years before 2004 exactly because they were aware of the European Commission's general concerns about minority issues in the candidate member states.

One development supporting this hypothesis was the growing willingness of the Polish government to devote attention to the situation of the Roma. As I mentioned, in the period before EU accession, Poland adopted a programme that was directed specifically towards this group. Although there is no clear evidence that this programme was established as a direct result of EU pressure within the confines of the conditionality strategy, it does illustrate a growing domestic concern in Poland for an issue that internationally has received a symbolic importance for European institutions and that for the EU was important to see 'solved' as much as possible before the 2004 enlargement. Clearly, the EU leaders and the European Commission were mainly afraid of the possibility of an influx of poor and discriminated immigrants from new member states with large Romani populations, such as the Czech Republic, Hungary, Slovakia, Bulgaria or Romania.²⁰ In this sense, they were less motivated to monitor the situation in Poland, where there are only small groups of Polish Romani citizens (in total 12,731 people according to the 2002 census). Nevertheless, in the context of this growing European worry about the Roma, the Polish government first initiated a pilot programme in the Małopolska region (in 2001) and later (in 2003) widened up this programme to the entire country.

²⁰ Such an aim was signalled in measures introduced by certain EU member states. In July 2001, for example, the British government stationed immigration officers at Prague's airport to screen all passengers travelling to the UK in order to detect people who wanted to claim asylum in the UK and prevent them from travelling. The passengers who were refused permission to enter the UK under this operation were very often Czech citizens of Romani origin.

After 2004, the picture has been different and one may now more clearly discern the fields where the EU has had *less* influence. One of these fields could be described as the field of anti-discrimination, equal opportunity and social inclusion. Poland did introduce basic anti-discrimination clauses partly as a result of its EU accession.²¹ The EU directives on Racial and Employment Equality (Directives 2000/43/EC and 2000/78/EC) have been adopted by Poland. In the field of employment and labour relations, the anti-discrimination provisions of the EC Directives were primarily implemented by the Polish labour code, which was twice adapted in order to transpose the directives.²² One could argue that, after 2004, the EU's focus has not been so clearly directed towards the protection of the cultures and identities of minority citizens (since this was supposed to be taken care of before accession) but towards these anti-discrimination provisions and regulations. In this area, however, the EU does not have the same leverage as it had in the area of minority rights in the pre-2004 period.

The resulting situation is complex. On the one hand, Poland is a country that has performed well in the area of minority rights protection. It has adopted a law on minority protection, which, although fairly limited in its ultimate granting of rights, was well-received by the EU in the context of its conditionality policy. Moreover, Poland installed a support system for minority organizations, an institutional structure that allows minority organizations to speak with policy-makers and fulfil an advisory role. It devised a number of institutions dealing with the actual implementation of support policy. On the other hand, evaluated against another background, the picture is less satisfying. It is one thing to install a system of minority rights protection and another thing to change actual practices of discrimination, create equal opportunities and foster social inclusion.

Since the EU has accepted Poland as a member of the EU, it has also accepted Poland's claim that the demand for minority protection as formulated in the Copenhagen Criteria has been satisfied. This development has made the minority issue largely into a 'non-issue' in current dialogues between the European Commission and new member state Poland. However, as one author argues, that does not mean that minority rights in new EU member states in Central Europe such as Poland are fully implemented:

²¹ Paweł Filipek and Maria Pamula, "Poland Country Report: Executive Summary", European Commission Report, Brussels, January 2005, at http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/plrep05_en.pdf.

²² *Ibid.*

The different types of minority rights have remained as strong or weak as they were in the domestic political context prior to EU accession, and they continue to develop along these lines. What's gone is the EU's external leverage—however limited it may have been in some of these countries.²³

In other words, because of the EU conditionality context before 2004, minority protection in Poland could be pushed by Europe in a certain direction, as the formation of the Minorities Law illustrates. However, this does not mean that minority needs have been fully satisfied since 2004. Moreover, since 2004, the EU does not have the same power to push domestic policy formation on minority protection in new directions.

There is currently a growing awareness among European leaders that the situation of minority-majority relations in Poland (not only with regard to ethnic minorities but also sexual minorities) has not necessarily improved, even if the country now has an institutionalized system of minority rights protection. A broad group of domestic and international politicians increasingly realize that the installment of minority rights legislation should be seen as only one part of the task. The more challenging aim is to create a more integrated society in which people who want to identify themselves with a minority group or are categorized as belonging to a minority are fully accepted by the broader population as equal citizens. The EU has less impact on how this latter task is being dealt with domestically.

There have been signs in Poland that, outside the realm of the institutional protection of minority rights in the fields of language and culture, there might be problems with minority protection, particularly in the field of anti-discrimination. One worrying indication, according to NGOs and observers inside and outside Poland, was the abolition in November 2005 of the government's Commissioner for the Equal Status of Women and Men. Although Magdalena Środa, who was appointed as government commissioner in this department under the former government, seemed at first to have been forced to hand in her resignation because of a personal ideological disagreement with the new government, the resignation soon appeared to signal a more fundamental governmental move, since not only the person was discharged from her function but also the function of equal status commissioner itself was eliminated.²⁴ This government decision has been strongly criticized, among others, by the

²³ Sasse, "Gone With the Wind ...", 25.

²⁴ Decree of the Council of Ministers of 3 November 2005 regarding the abolition of the Government Commissioner for Equal Status of Women and Men, Dz.U. 2005/222/1913. See also Magdalena Kula, "Co z biurem ds. Równego statusu kobiet i mężczyzn?", *Gazeta Wyborcza*, 25 October 2005.

European Monitoring Centre on Racism and Xenophobia (now the European Union Agency for Fundamental Rights) in its 2006 annual report. The criticism was twofold. First of all, the report argued that, although the Commissioner for the Equal Status of Women and Men had originally been designated as a specialized monitoring body under Article 13 of the EU's Race Equality Directive (2000/43/EC), it "did in fact not deal with a single case of ethnic discrimination". Secondly, it argued, since its abolishment in 2005, "there is no entity in Poland fulfilling the role of the Specialised Body under Art 13 Race Equality Directive".²⁵

The current Polish government has also been criticized internationally for not taking the promotion of diversity and social inclusion to heart politically. Especially the nomination of Roman Giertych (League of Polish Families) in 2006 to the post of education minister in the current government has raised worries inside and outside Poland that a strong moral view of Polish national identity, a view in which those who do not conform to a certain moral image are not accepted as equal citizens and as members of the 'true' Polish nation, might be gaining ground. Journalist Wojciech Kośc has noted that Giertych's moves "to introduce classes on religion and patriotism have angered liberals who accuse him of undermining secular education and promoting nationalism. His open hostility toward homosexuals is viewed by many as extreme, even for this devoutly Roman Catholic country."²⁶

Within the EU institutions, minority protection in Central and Eastern Europe used to be interpreted as a field of policy on which the EU could have a strong impact through the use of a conditionality strategy. Since 2004, the EU is faced with a policy challenge that is broader than simply the issue of providing legal protection of minorities' cultural expressions but pertains to the acceptance of diversity and the struggle to eradicate discrimination. This is not an area in which the EU has a lot of impact; unfortunately, neither is it an area of policy in which the older EU member states can claim to have an unblemished record.

V. Conclusion

In this article I have briefly explored the relationship between domestic policy formation on minority issues in Poland and the evolving European context. Before 2004, the EU applied

²⁵ European Monitoring Centre on Racism and Xenophobia, "The Annual Report on the Situation Regarding Racism and Xenophobia in the Member States of the EU", Vienna, 2006, 30, at <http://eumc.europa.eu/eumc/material/pub/ar06/AR06-P2-EN.pdf>.

²⁶ Wojtek Kośc, "Poland: Class Divisions", *Transitions Online*, 27 September 2006, at <http://www.tol.cz/look/TOL/article.tpl?IdLanguage=1&IdPublication=4&NrIssue=186&NrSection=3&NrArticle=17624>.

membership conditionality in order to attempt to stimulate Poland to adopt special minority protection measures. As a result, Poland turned to the official recognition of the ethnic specificity of minority groups and the acceptance of group-related cultural entitlements. Since the EU enlargement of 2004, however, European attempts to stimulate ethnocultural diversity in the new member states have focused less on group-related rights but have emphasized the importance of social inclusion, anti-discrimination and equal opportunities. European leaders and EU actors are, however, increasingly worried that the current Polish political climate hinders the development of ethnic diversity, equal opportunities, anti-discrimination and social inclusion, even though Poland has satisfied the Copenhagen Criteria by developing a law on minority rights and an institutional framework for policy dialogue with minority leaders in the fields of language and culture. The disjuncture between the growing EU concern about the promotion of the acceptance of ethnic diversity, equal opportunities, anti-discrimination and social inclusion, and the way in which minority rights are protected in Poland points to the current limits of European involvement in domestic policy making and domestic social relations in the new member states.

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