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REALIZATION OF THE RIGHTS OF POLES IN GERMANY FOLLOWING THE TREATY ON GOOD NEIGHBOURSHIP

SELECTED ASPECTS ON THE BASIS OF DOCUMENTS FROM THE PARLIAMENTS
OF POLAND AND GERMANY

The rights of national minorities in Germany, and in particular the rights of the Polish minority belong to a set of issues which have caused a lot of controversies in Polish-German relations in the past and at present.

Having chosen the parliaments of both countries for the present analysis of the realization of the rights of Poles in Germany the author assumed that parliaments are assemblies representing the societies of both countries and views of different social groups, as well as bodies which participate in the formulation (and sometimes in the realization) of interior policy and to some extent of foreign policy¹. On the other hand, parliaments are also a forum where the government's attitude towards the above issue can be presented.

The parallel sessions of both parliaments, the Bundestag and the Sejm (the lower house of parliament) of the third Republic of Poland on the occasion of the 10th anniversary of signing the Treaty on Good Neighbourship and Friendly Cooperation, and the relevant resolutions passed by the parliaments have become a symbol of cooperation and coordination of actions of both assemblies in the shaping of Polish-German relations. The sessions were held on 21 June 2001 (during the 111th session of the Polish Sejm 3rd term of office and 176th session of the Bundestag 14th term of office)².

¹ A piece of evidence confirming this thesis is, for example a resolution of the Bundestag from 10 Feb 2011, *60 years of the Expellees Charter. Bringing reconciliation to an end*, which included controversial statements which were damaging for Polish-German relations, or an earlier resolution from 29 May 1998 *The expelled, the displaced and German minorities as a bridge between Germany and its eastern neighbours* which became the reason for the so called paper war between the parliaments of Poland and Germany.

² Polish-German parliamentary groups function in the Sejm and in the Bundestag. Many sessions were held by the joint committees of both parliaments (e.g., foreign affairs committees) or presidia (e.g., in Słubice in 2004, in Berlin in 2006 and 2009, in Wrocław and Krzyżowa on 23-24 Nov 2008). In 2009 a plaque commemorating the achievements of 'Solidarność' was installed in the Reichstag. It is

EARLIER LEGAL REGULATIONS – A HISTORICAL PERSPECTIVE

The protection of national minorities in Germany was ensured by the constitutional law in the past. Special articles devoted to minorities were already present in the Frankfurt constitution from 1849. The constitution of the Weimar Republic from 11 August 1919 in article 113 ensured that foreign language national groups (*fremdsprachige Volksteile*) in the Reich have freedom of development and it prohibited imposing any legal and administrative restrictions concerning using their native language especially in education, administration and courts of law³.

The Prussian Constitution from 30 November 1920 in article 73 on the area of particular provinces allowed for the use of other languages apart from the German language as the language of instruction in schools for **foreign language groups** (*fremdsprachige Volksteile*) and as official languages⁴.

Despite these constitutional regulations it proved necessary for the protection of minorities in the divided Upper Silesia to have an article included in the Geneva Convention from 15 May 1922 concerning a guarantee for 15 years of equal rights for Poles and Germans living in the former plebiscite areas. On these grounds the Polish minority inhabiting the area incorporated into Germany obtained the right to use the Polish language, to have minority education and to develop their cultural, sports, professional and political activity. However, both the constitutional provisions and the Geneva Convention's regulations were violated with reference to Polish people in the inter-war period (especially in the Opole Silesia)⁵.

The status of national minority for Poles in Germany was denounced by Hermann Göring's decree from 27 February 1940 followed by a dissolution of all Polish unions and associations and the confiscation of their property.

After World War II a considerable number of Poles lived on German territory, although the group was diverse with respect to the time and reason of having arrived to Germany. The group included the descendants of the so called old immigration and people who arrived to Germany at the time of the war (forced labour work-

also worth mentioning that on 21 Feb 2011 the first joint session of the foreign affairs committees of the Sejm, the Bundestag and the Russian Duma was held and was devoted to the issue of visa-free movement for the residents of the Kaliningrad region.

³ „Die fremdsprachigen Volksteile des Reichs dürfen durch die Gesetzgebung und Verwaltung nicht in ihrer freien, volkstümlichen Entwicklung, besonders nicht im Gebrauch ihrer Muttersprache beim Unterricht, sowie bei der inneren Verwaltung und der Rechtspflege beeinträchtigt werde“. http://www.documentarchiv.de/wr/wrv.html#ERSTER_ABSCHNITT02.

⁴ „Die Provinziallandtage können durch Provinzialgesetz neben der deutschen Sprache zulassen: a) eine andere Unterrichtssprache für fremdsprachige Volksteile, wobei für den Schutz deutscher Minderheiten zu sorgen ist;

b) eine andere Amtssprache in gemischtsprachigen Landesteilen“. <http://www.verfassungen.de/de/preussen/preussen20.htm>.

⁵ [M.S. Korowicz], S. Komar [pseud.], *Górnośląska konwencja genewska pomiędzy Polską a Niemcami 1922–1937 [The Upper Silesian Geneva convention between Poland and Germany]*, Katowice–Warszawa 1937.

ers, prisoners-of-war, soldiers conscripted to the German army units, etc.) who for various reasons did not return to Poland. The Polish emigration to Germany did not cease after 1945. Groups of Polish immigrants continued to arrive in both German countries that were established in 1949. The largest group was constituted by the so called displaced persons (*Aussiedler*), that is people who claimed their presumed German origin (according to article 116 of the Basic Law), and who upon arrival to the Federal Republic of Germany received (in the German nomenclature – regained) German citizenship, and until the 1990s were using privileges provided by the expellee law.

However, rights for national minorities were not guaranteed either in the Basic Law (BL) of West Germany from 23 May 1949 or in the Basic Law of the reunified Germany from 1990. Only article 3 item 3 BL included a provision saying that “nobody can be disadvantaged or privileged because of their sex, birth, race, language, place of origin, social background, religion and political or religious views (...)”⁶.

The East Germany constitution from 1 October 1949 by reference to the Weimar constitution included article 11 item 1 saying that a free national development of foreign language groups in the GDR should be supported by law and administration in the Republic. In particular these groups cannot be discriminated against in teaching their native language, in administration and in legislation⁷. However, this article was missing from the GDR’s constitution from 6 April 1968 and from its amendment from 7 October 1974. There were only articles about the equality of rights and responsibilities of all the citizens of the GDR irrespective of their nationality, race, views, religion, social background and position (art. 20), and about the constitutionally protected Sorbo-Lusatian minority (art. 40)⁸.

In practice the Poles in East Germany were not recognized as a minority and thus they could not establish their own organizations or publically cultivate their own culture and language.

In West Germany the status of recognized national minorities was granted to: Danes, Frisians, Lusatian Sorbs and Roma. The rights of the first three minorities are included in the constitutions of the member states inhabited by these minorities⁹.

⁶ *Basic Law (constitution) of the Federal Republic of Germany from 23 May 1949/Grundgesetz für die Bundesrepublik Deutschland vom 23. May 1949. German and Polish version with all the consecutive amendments. 2nd edition according to the text from 31 Dec 1996, Poznań 1997, p. 71.*

⁷ „Die fremdsprachigen Volksteile der Republik sind durch Gesetzgebung und Verwaltung in ihrer freien volkstümlichen Entwicklung zu fördern; sie dürfen insbesondere am Gebrauch ihrer Muttersprache im Unterricht, in der inneren Verwaltung und in der Rechtspflege nicht gehindert werden“. <http://www.documentarchiv.de/ddr/verfddr1949.html>.

⁸ “Bürger der Deutschen Demokratischen Republik sorbischer Nationalität haben das Recht zur Pflege ihrer Muttersprache und Kultur. Die Ausübung dieses Rechts wird vom Staat gefördert“.

⁹ In the constitution of Brandenburg from 20 Aug 1992 the rights of the Sorbo-Lusatians are written in art. 25; in the constitution of Saxony from 27 May 1992 in art. 6. In the constitution of Schleswig-Holstein from 13 Dec 1949 the rights of national minorities were guaranteed in art. 5. In addition, the

TREATY REGULATIONS OF THE RIGHTS OF THE POLISH GROUP IN GERMANY

The rights for the German minority in Poland and for the Polish people in the Federal Republic of Germany are guaranteed on the principle of mutuality in the Treaty on Good Neighbourship and Friendly Cooperation from 17 June 1991 in articles 20, 21 and 22, as well as in the attached letters of the foreign ministers.

On 13 September 1991 Krzysztof Skubiszewski, the Polish Minister of Foreign Affairs when speaking in the Parliament of the Republic of Poland during the debate concerning the ratification of the Treaty on Good Neighbourship by the government stated that “the issue of the position of Polish people in Germany was not easy” but nevertheless “negotiations resulted in beneficial solutions”¹⁰.

Poles in Germany were defined in article 20 item 1 of the Treaty as “persons in the Federal Republic of Germany with German citizenship who are of Polish origin or who identify themselves with the Polish language, culture or traditions”¹¹.

The act stated that they have the right individually or together with other members of their community to freely express, maintain and develop their ethnic, cultural, language and religious identity without any attempts to assimilate them against their will”¹².

In the latter sections of article 20 it was stated that this right in particular refers to:

- freedom of using the native language in private and public life, access to information in that language, and freedom in disseminating and exchanging information in that language

- freedom of establishing and maintaining institutions, organizations or educational, cultural and religious associations which have the right to apply for voluntary and other financial means, as well as for public aid in line with the national law, and which have equal access to the mass media of their region, (...)

- freedom to establish and maintain undisturbed contacts among themselves within their own country, as well as across borders with citizens of other countries with whom they share their joint ethnic or national origin, cultural heritage or religious beliefs,

- the use of their first names and surnames in the original form of their native language,

- freedom to establish and maintain organizations or associations within their own country and to subscribe to international non-governmental organizations,

rights of Danes were regulated by the so called Köln Declaration from 26 Sept 1949 (*Erklärung der Landesregierung Schleswig-Holstein über die Stellung der dänischen Minderheit*) and by the Bonn-Copenhagen declarations from 29 March 1955.

¹⁰ Shorthand report from the 73rd session of the Polish Sejm, in: *Polska – Niemcy: dobre sąsiedztwo i przyjazna współpraca*, ed. by J. Barcz and M. Tomala, Warszawa 1992, p. 123.

¹¹ Quoted after: *Polacy i Niemcy. Płaszczyzny i drogi normalizacji. Bilans pierwszego pięciolecia*, ed. by M. Lis and A. Trzecińska-Polus, Opole 1997, p. 208.

¹² Ibidem.

- enjoying on equal terms with others the effective legal provisions to realize their rights in line with national law”¹³.

Article 1 item 2 stated that “The parties to the Treaty will in particular: (...) despite the need to learn the official language of the relevant country strive in agreement with the binding regulations of the national law to ensure for the members of the groups defined in article 20 item 1 the adequate possibilities to teach their native language, or in their native language in state schools, as well as where it is possible and necessary to use the language in communication with public authorities”¹⁴.

Additionally, the German side declared in two identical letters of foreign ministers of the Republic of Poland and the Federal Republic of Germany attached to the Treaty on Good Neighbourship that it will make endeavours to create opportunities also for the persons of Polish origin or those who identify themselves with the Polish language, culture and traditions, who are not subject to article 20, that is they do not hold German citizenship to have the capacity to enjoy the broadly understood scope of rights listed in article 20 and 21.

POLISH MATTERS IN GERMANY IN THE BUNDESTAG FORUM

The issues concerning the realization of the German minority rights in Poland and of the Polish group in Germany many a time have been an object of interest of the German Bundestag, although the former group has received much more attention.

From the very beginning it was pointed out that both these groups can act as bridges in the mutual contacts between their nations and states. Such convictions, hopes and expectations were explicitly verbalized in a motion put forward by the SPD faction on 16 October 1991 which granted Polish people in Germany (similar to the German minority in Poland) the role of a **bridge** between both nations¹⁵. Also the CDU/CSU and FDP factions indirectly expressed similar views as they initially wrote about the participation of “parallel groups”, although they focused on the role of the German minority and the Germans “expelled from their home areas”¹⁶.

In September 2000 in the motion submitted by the MPs: Katherine Reiche, Volker Rühle, dr Friedbert Pflüger, Karl Lamers, Hartmut Koschyk, dr Andreas Schockenhoff, Hans-Dirk Bierling, Clemens Schwalbe and the CDU/CSU faction entitled “Towards future directions for Polish-German friendship” appeals were made in the Bundestag to include Poles living in Germany and people of Polish origin in the various projects concerning German-Polish cooperation¹⁷.

¹³ Ibidem, p. 209.

¹⁴ Ibidem.

¹⁵ Deutscher Bundestag, Drucksache (henceforth: DB Drs.) 12/1319, 16 Oct 1991, p. 2.

¹⁶ DB Drs. 12/1107, 3 Sept 1991.

¹⁷ DB Drs. 14/4162, 26 Sept 2000, p. 2.

In the later documents, for example in the draft of the resolution from 23 January 2001 the CDU/CSU faction drew attention to the fact that in the further development and expansion of bilateral relations it is important to include in the course of regular consultations the matter of the Germans expelled from their home territory, the German minorities in Poland and the Poles living in Germany¹⁸.

In the draft of the resolution submitted by the SPD and Alliance 90/The Greens factions entitled, “Towards a common future: Germans and Poles in Europe” from 7 February 2001 it was stated, among others that “the members of the German minority in Poland and the Poles living in Germany as well as persons of Polish origin, and the many expellees from their home territory play **an important and constructive part** in Polish-German relations”.

Also in the joint motion concerning the resolution of the factions SPD, CDU/CSU, Alliance 90/The Greens and F.D.P. from 20 June 2001 entitled, “Germans and Poles in Europe: joint future” the following statement was included: “The German Bundestag calls the federal government to: (...) recognize that the members of the German minority in Poland and Poles and citizens of Polish origin living in Germany as well as many expellees from their home territory play an **active, bridging and constructive role** in the bilateral relations. Their matters need to be considered in line with the Good Neighbourship Treaty during the scheduled regular consultations”¹⁹.

During the debate from 21 June 2001 Markus Meckel, an MP (SPD) pointed to the “hundreds of thousands of German citizens who have language, cultural and family ties with Poland and to many Polish citizens who live or study in Germany as those who fulfill their “important role as **mediators** in bringing both countries together”²⁰.

In the early 1990s occurrences of German right-wing extremists publically turning against Poles in Germany became an irritable issue in the context of the Polish community. This topic was raised by Ulla Jelpke, an MP together with the PDS/Left List group in the Bundestag forum²¹. One of the replies obtained from the government said that in Germany the number of attacks against Polish citizens rose in particular after the introduction of the visa-free movement in the borderland areas. In consequence, for example on 8 April 1991 41 people were arrested and until mid 1993 36 anti-Polish incidents were reported²². It is worth noting that when on 27 May 1994 the government of the Federal Republic of Germany was replying to the question raised by Hartmut Koschyk from the CSU concerning the attacks of Polish extremists on members of the German minority it informed about the government’s firm reaction, and about the fact that the Polish side had not only started legal action

¹⁸ DB Drs. 14/5138, 23 Jan 2001, p. 2-3.

¹⁹ DB Drs. 14/6322, 20 Jun 2001, p. 4.

²⁰ DB Plenarprotokolle (henceforth: PIPr.) 14/176, 21 Jun 2001, p. 17280.

²¹ DB Drs. 12/5507, p. 11.

²² DB Drs. 12/5507, 28 Jul 1993, p. 6-7.

but also the Polish Deputy Prime Minister and the Minister of Justice condemned these attacks in the parliamentary forum²³. Yet, no words of condemnation concerning the attacks on Polish people in Germany or any other anti-Polish incidents were uttered by the German government in the Bundestag²⁴.

The issue of the unequal status of the German minority in Poland and the Polish group in Germany was raised in the Bundestag relatively early by MPs from the opposition. Disregarding the different status written in the Treaty some members of parliament used in the Bundestag the term “Polish minority” to describe Poles in Germany (e.g. Gerd Poppe from the Green Party during a debate on 6 September 1991 concerning the ratification of the German-Polish treaties called for respecting and realizing the rights of “**the Polish minority in Germany**” in compliance with the articles of the Treaty on Good Neighbourship and the letters of foreign ministers²⁵.

The term “**Polish minority in West Germany**” also appeared in a small question raised by Ulla Jelpke from PDS on 31 March 1995²⁶. Anyway, already in 1992 Ulla Jelpke, Gregor Gysi and other MPs from the PDS/Left List put forward an independent motion in the Bundestag concerning granting the status of national minority to Poles living in Germany. Among the postulated rights which should be guaranteed by such status the following ones were emphasized: safe residency status, unlimited right to employment and bringing up their family members, recognizing Polish diplomas and certificates, introducing Polish broadcasts and supporting the teaching of Polish as a foreign language in German schools²⁷.

In 1993 the MPs from the opposition PDS by referring to a conference organized in Berlin in 1992, “Poles in Germany – guests or minority?” asked about the general political and legal steps the government had taken since the Treaty on Good Neighbourship and Friendly Cooperation with the Republic of Poland to ensure the same legal position of Poles who live in Germany as in the case of Germans (they, among others, pointed to the unequal treatment of the same qualifications held by Polish people who are foreigners and by the Poles-*Aussiedler*). The reply they received said that the members of the Polish group in Germany are by virtue of the Basic Law treated as equal to German citizens and the Treaty with Poland was not needed to

²³ DB Drs. 12/7781, p. 1.

²⁴ For example, when an MP from the PDS/Left List group suggested that the government should cut itself off from statements such as: ‘Silesia is a part of Germany’ uttered at the Meeting of Silesians (co-financed by the federal government), she received a reply that the “federal government can see no reason to assess statements of private persons” and that “the government could only apologize for private statements if it had initiated them earlier on” (26 Aug 1993). The government reply to the interpellation of Ulla Jelpke and the PDS/Left List group DB Drs. 12/5591, 26 Aug 1993, p. 2-5.

²⁵ DB Plenarprotokolle (henceforth: PIPr.) 12/39 Sitz., 6 Sept 1991, p. 2159.

²⁶ DB Drs. 12/3631, 5 Nov 1992.

²⁷ DB Drs. 12/3631, 5 Nov 1992.

ensure it. The Treaty, however guarantees them the same rights as those of the German minority in Poland, among others to express, maintain and develop their ethnic, cultural, language and religious identity²⁸.

The PDS MPs were also interested in the question of the right to vote and to participate in political life for both groups. They received a detailed reply from the government in this matter referring to the number of candidates from the German minority lists for the Sejm and Senate in Poland²⁹ as well as the number of councilors in local and regional representative bodies³⁰. However, when replying to the part of the question regarding the participation of Poles, the representative of the government described the electoral law binding for all German citizens and no data was provided regarding the participation of Polish people in any representative bodies³¹.

The objection formulated in 1995 by the PDS that the German government does not regard as a national minority persons who have German citizenship and who are Polish in origin or identify themselves with the Polish language, culture or traditions was overruled by the argument that in the case of that group the requirement of the residency on the traditional home territory was not met³².

Establishing the number of the German Polonia was problematic. The Federal government when answering the questions from the PDS MPs stated that it does not have any detailed data concerning the matter and it does not know how many Poles have arrived to Germany in the last 100 years, neither how many were brought to Germany as forced labour workers but the “number in question may be **ca. 2 million people**”. The representative of the government went on to explain that there is also no data concerning the number of people who stayed in Germany after the war and received German citizenship³³.

²⁸ BD Drs 12/5507 from 28 Jul 1993 Reply of the federal government to a small question by the MP, Ulla Jelpke and the PDS/Left List group concerning the Polish minority in Germany.

²⁹ They received a reply that the minority is represented in the Sejm by 4 MPs and in the Senate by 1 senator.

³⁰ They received a reply that the members of the minority were standing for election from the minority lists in the Opole, Katowice and Częstochowa voivodeships. Altogether they were elected to 57 local councils (*gminas*) and to all three regional councils (*sejmiki wojewódzkie*). In the Opole voivodeship consisting of 65 local areas the minority is represented by 524 representatives in 38 *gminas*. In 26 *gminas* the minority received the majority of seats in the councils, in 22 *gminas* it has its own mayors, in 26 *gminas* it has its own chairs in the councils. 31 representatives of the German minority were delegated to the regional councils. In the Katowice voivodeship 60 people were elected from the minority lists to 12 local councils. In 5 *gminas* the mayor is from the minority and in 2 *gminas* the chairs of local councils represent the minority. The regional council includes 8 minority representatives. In the Częstochowa voivodeship the minority is represented by 7 councilors, in 4 *gminas* they are mayors, in one the chair of the local council. There are 3 representatives in the regional council.

³¹ DB Drs. 13/1036 from 31 Mar 1995 – the government’s reply to the small question by the MP, Ulla Jelpke and other MPs from the PDS faction entitled, “Minority rights in the Treaty on Good Neighbourship and Friendly Cooperation with the Republic of Poland”.

³² DB Drs. 13/1036, 31 Mar 1995, p. 3-4.

³³ BD Drs 12/5507 from 28 Jul 1993 – reply of the federal government to a small question by the MP, Ulla Jelpke and the PDS/Left List group concerning the Polish minority in Germany.

However, the German government was able to quote precise numerical data concerning the number of Polish people in East Germany and their residency status. From 7 October 1949 till 2 October 1990 as many as 9,177 Polish citizens arrived to East Germany. Among those 709 had a permanent residency permit (*unbefristete Aufenthaltserlaubnis*), 2,061 had the right to stay (*Aufenthaltsberechtigung*), 434 had permission to stay (*Aufenthaltsbewilligung*), and 5 persons were authorized to stay (*Aufenthaltsbefugnis*).

According to the data from 12 June 1993 as many as 268,254 Polish people (that is foreigners holding only Polish citizenship) lived in the unified Germany. However, the government representatives were not able to estimate how many Poles had dual citizenship³⁴. The number of people holding Polish citizenship and registered in the German offices for foreigners reached 263,381 on 31 December 1994³⁵.

In the consecutive parliamentary terms when the Polish issues in Germany stopped being a problem and were rarely raised information about their situation can be found in reports presented to the Bundestag concerning migration (*Migrationsberichte*)³⁶. In report No. 8 discussed in the parliament on 17 January 2011 there is first of all information that Poles constitute the third largest national group (after Turks and Italians) in Germany³⁷. As far as concrete numbers are concerned Poles (counted together with *Aussiedler* who had arrived from Poland) defined as Poles “with the migration experience/with migration in the background” (*mit Migrationshintergrund*) by the end of 2009 constituted a group of 1,103,000 people whereas an additional 195,000 Poles were defined as persons who did not personally experience migration (*ohne Migrationshintergrund*). Adding up the numbers in both groups we obtain altogether ca. 1.3 million people³⁸.

Another issue raised in the Bundestag was the rights of the Polish group. The realization of the Treaty provisions was mainly of interest to the parliamentary opposition representatives (MPs from the PDS party showed particular initiative) and the voices of criticism were not singular and referred to the lack of fulfillment of the commitments by the German government. This mainly referred to the right to obtain financial support from the German government for teaching the Polish language and cultivating Polish culture.

The PDS opposition MPs asked very detailed questions addressed to the government, that is how the support for teaching the Polish language increased after the Treaty with the Republic of Poland from 1991 (with respect to consecutive years), namely how much financing was provided, how many teachers were employed and

³⁴ DB Drs. 12/5507, 28 Jul 1993, p. 2-3.

³⁵ DB Drs. 13/1036, 31 Mar 1995, p. 4.

³⁶ On 8 June 2000 the German federal parliament obliged the government to present reports concerning the migration processes in the parliamentary forum.

³⁷ DB Drs. 17/4580, 19 Jan 2011, p. 205. Cf. also DB PIPr 17/83 Sitz. from 17 Jan 2011, p. 9291-9298.

³⁸ *Ibidem*, p. 219.

specially trained, how many institutions to upgrade teachers' qualifications were created, how many advisors were employed, how many Polish and/or German institutes were included in the process, and what legal steps were taken by the federal government to support the Polish language in Germany. The reply they received said that the educational matters are in the capacity of the constituent countries. They were also informed that within the scope of the realization of the Treaty two working groups were created: for the Polish language and for the German language. A permanent German-Polish working group "Teaching Polish and Polish studies in Germany" was established on 27 February 1991. It met 5 times but the evaluation of the state of teaching the Polish language in Germany will be presented at the 6th meeting in early 1996³⁹.

When replying to the question asked by the PDS MPs about the support provided for the Polish group concerning teaching the Polish language and developing their cultural life the representatives of the German government said that the government supports only projects of **nationwide** relevance and the constituent countries are responsible for fulfilling the other tasks⁴⁰. The same answer was given by the government representative to Fritz Wittmann, an MP from the ruling coalition who quoted the provisions included in article 21 of the Treaty on Good Neighbourship. Manfred Carstens, the parliamentary secretary of state referred to articles 70 and 30 of the Basic Law about the division of the powers between the federation and the constituent countries. He also added that the German Foreign Office initiated in 1993 efforts which aimed at creating an "umbrella association" (in the whole of Germany) for the Polish groups, which could become a partner in talks with the German government. As it was presented by the Foreign Office the Federal Association of the Polish Council in Germany which in 1997 associated 100 organizations and 11 Landen unions was supposed to become such an association. In 1996 on the 5th anniversary of signing the Treaty the Association prepared a cultural project for the whole of Germany for which it altogether received 400,000 DM⁴¹.

The MPs many times asked about the financial support provided by the German government for the cultural activity and cultivating the identity of people with Polish origin who have German citizenship, as well as of the German minority in Poland. The answers provided by the government point to huge disproportions between the situation of both groups⁴².

³⁹ DB Drs. 13/1036 from 31 Mar 1995.

⁴⁰ DB Drs. 13/1036, 31 Mar 1995, p. 4.

⁴¹ DB Drs. 13/8310, 9 Jul 1997, p. 3-4

⁴² The Polish group in Germany received in 1992 25,000 DM via the East-European Cultural Centre, IGNIS. In 1994 the German Foreign Office allocated 240,000 DM out of which only 85,000 DM were used for the federal cultural projects organized by Poles – DB Drs. 13/1036, 31 Mar 1995, p. 6. In the following years the finances allocated for such projects amounted to: 399,200 DM in 1996, 421,500 DM in 1997, 294,800 DM in 1998, 178,000 DM in 1999, and the planned amount for 2000 was 405,000 DM (however, the document did not have information about how much of the money was actually used) – DB Drs. 14/4045, 6 Sept 2000, p. 5.

Questions were also asked about the Polish language mass media. The German government informed the MPs in 1993 that as far as the programmes in Polish were concerned, apart from the broadcasting by private stations, the DLF and Deutsche Welle have for years broadcast programmes in Polish. The TV channel two in the series “Neighbours in Europe – reports and information in foreign languages” televised a series “This is Poland” over the span of 14 days. The ZDF channel was adding a 5-minute information slot about events in Germany in Polish with German subtitles. The ARD station decided to have a daily 20-minute broadcast (at the time in 1993 it was in the preparation stage). The WDR station in the programme “Radio Dortmund” transmitted a weekly 25-minute programme in Polish. The Saara country offered to make such a programme but, as they said, Poles have not as yet taken up the offer.

The German government also informed that the Deutsche Bibliothek receives 5 copies of obligatory Polish language newspapers printed in Germany. However, the papers’ circulation was unknown to the government although it was added that the papers did not receive financial support from the budget of the German government⁴³.

The PDS MP, Gerhard Zwerenz during the debate on 29 May 1998 said that if the German government wants to be credible it should support, not only the German minorities in other countries and care for their identity, but it should also take similar measures towards the minorities living in the Federal Republic of Germany since the different treatment of the German minorities abroad and of the national minorities in one’s own country is “a policy of discrediting persons of other nationalities”⁴⁴.

The document prepared by the MPs from the SPD and the Green Party (Drs. 14/5244) from 7 February 2001 called the government, among others to expand the opportunities to teach Polish at schools, universities and in various institutions for adult education.

The MP, Helmut Lippelt (Alliance 90/The Greens) also stated during a debate from 21 June 2001 that “In the Treaty from 1991 both sides committed themselves to supporting the language of the other country. In this respect Germans have a lot to make up for. Polish friends in Berlin continuously point out how difficult it is to find a school for their children in which Polish would be accepted as the language of instruction, and not only as the language of the expellees who as soon as possible want to achieve language integration in Germany.

We step forward to obtain support for teaching the Polish language in our schools. The Polish language, Polish literature, Polish history must gain in importance in our schools and universities”⁴⁵.

⁴³ Ibidem.

⁴⁴ DB PIPr. 13/239 Sitz., 29 May 1998, p. 22036.

⁴⁵ DB PIPr 14/ 176, 21 Jun 2001, p. 17283.

THE ISSUES OF POLES IN GERMANY IN THE PARLIAMENTARY FORUM OF THE SEJM
AND SENATE OF THE REPUBLIC OF POLAND

During the time of the Polish People's Republic Edmund Jan Osmańczyk was the proponent of the Polish diaspora (Polonia) including the Poles in Germany. He was a parliamentary representative of the Opole region for many years, and after the democratic changes he was a senator and the first head of the Senate Committee for Emigration and Poles Abroad. He called for putting an end to the Polish-Polish wars and for building "a lasting two way bridge between the country and the emigration"⁴⁶, which in the context of the modern mass labour-related emigration, and in the context of the disputes within the German Polonia and on the Polish political scene seems especially topical.

After signing the Treaty on Good Neighbourship and Friendly Cooperation the MPs in their speeches and interpellations pointed out to the Polish government first of all the asymmetry in the Treaty articles, and the lack of full realization of the resolutions by the German side towards Poles in Germany. The MPs demanded identical realization of the rights of Poles in Germany and Germans in Poland, though they frequently admitted that the fact that Poles in Germany are conflicted and divided is an obstacle. Sometimes however, the blame for this state of affairs was ascribed to the German side (e.g., Ryszard Matusiak in his speech on 21 June 2001).

Already on 13 September 1991 during the first debate on the project of the act concerning the ratification of the Treaty several MPs pointed out the lack of equal guarantees of the rights for the German minority in Poland and for the Poles in Germany. The MP, Józef Oleksy speaking on behalf of the Parliamentary Club of the Democratic Left said that with reference to the Poles in Germany these are modest regulations which seem insufficient⁴⁷. The MP, Urszula Jarosz from the Parliamentary Club of Christian-Social Union expressed a view that "the Polish minority in Germany is a problem for our country" since its legal status as a minority had not been regulated and this has "negative consequences for its consciousness and behaviour"⁴⁸.

However, it needs to be added that the minister Krzysztof Skubiszewski in his reply to the MPs did not share their opinion about the asymmetry of the regulations concerning the minorities⁴⁹.

During the second debate over the above mentioned ratification act the same problem was raised by the following MPs:

⁴⁶ Cf. e.g., E. Osmańczyk, *Kraj i emigracja. Mowy sejmowe posła ziemi opolskiej [The country and emigration. Sejm speeches of the Opole region MP]*, Opole 1983, p. 70-75, 91.

⁴⁷ Shorthand report from 73rd session of the Polish Sejm, in: *Polska – Niemcy...*, p. 129.

⁴⁸ *Ibidem*, p. 138-139.

⁴⁹ *Ibidem*, p. 145.

- Ryszard Gajewski from the Parliamentary Club of the Catholic-Social Union who expressed his hope that “the Polish government will do everything so that the Polish minority in Germany is treated not in a worse manner than the German minority in Poland”⁵⁰;

- Tadeusz Kijonka (independent) who described the issues of the national minority in the Treaty as “key issues”. The MP asked a rhetorical question whether Poland will in an equal degree to the German state be able to ensure support and show interest in the group of Poles settled in Germany and “whether it will be able to meet the criteria of equal benefits and factual aid”⁵¹;

- Jerzy Wuttke from the Civic Parliamentary Club who expressed the opinion that “the most important thing is that the Polish groups use the opportunities which have been created by the Treaty”. As the speaker maintained some people of Polish origin for various reasons do not want to admit to their Polish roots. With reference to this the MP appealed for Poland’s active help, primarily from the government and the parliament for the Polish communities in Germany⁵²;

- Marek Jurek from the Civic Parliamentary Club. He described the regulations concerning the minorities as one of the three basic gains for Germany, which were negotiated by that country with the vision of “historical and prospective national interests”. He regarded the naming of one group as a minority, and the other as “persons from the Polish culture or of Polish origin” as a disproportion⁵³.

Eight years after signing the Treaty professor Bronisław Germek, the Minister of Foreign Affairs since 1999 when providing an answer for the interpellation No. 2099 said that in the social estimation “the assessment of the realization by the German side of the articles from the 1991 Treaty which refer to the German citizens declaring Polish identity is the least positive”.

In the opinion of the Polish Ministry of Foreign Affairs “the problems of the German Polonia and the difficulties in the realization of the relevant guarantees of the Treaty stem (...) not from the content of the document but from the policy conducted by some German offices and from the lack of good will and adequate understanding of the articles of the Treaty”. In conclusion the Minister stated that “we assess the scope of complying with the articles of the Treaty concerning the rights of the Polish group (...) by the German side as insufficient”⁵⁴.

In the resolution of the Parliament of the Republic of Poland on the occasion of the 10th anniversary of signing the Treaty on Good Neighbourship and Friendly Cooperation between the Republic of Poland and the Federal Republic of Germany

⁵⁰ Shorthand report from the 78th session of the Sejm of the Republic of Poland in: *Polska – Niemcy...*, p. 165.

⁵¹ *Ibidem*, p. 169.

⁵² *Ibidem*, p. 173.

⁵³ *Ibidem*, p. 175.

⁵⁴ Reply of the Ministry of Foreign Affairs to the interpellation No. 2099 from 13 Jul 1999.

(document No. 3082) from 21 June 2001 a hope was expressed that the Polish community in Germany will make increasing use of the rights and privileges guaranteed for minorities in the Treaty.

However, according to the Government information (document No. 1328) concerning the realization of the Polish-German Treaty on Good Neighbourship and Friendly Cooperation from 17 June 1991 which was presented on 25 January 2007 during the 33rd session of the Parliament, 5th term of office, the foreign minister Anna Fotyga described the Treaty articles regarding Poles in Germany as an area which is “open, unfinished and raising some doubts”. She evaluated the functioning of the Polish group as “showing certain asymmetry (...) taking into account the rights and opportunities enjoyed by the German minority on Polish territory”⁵⁵. She added that the government of the Federal Republic of Germany made a commitment to support persons of Polish origin or those who identify themselves with the Polish language and identity, however this commitment is realized very poorly or it is mostly not realized⁵⁶.

Detailed issues connected with the situation of Poles in Germany raised in the Sejm were almost identical to the ones discussed in the Bundestag and concerned the following matters:

- 1/ lack of minority status
- 2/ problems of Polish language education
- 3/ low financial resources provided by the German side for the functioning of Polish organizations in Germany
- 4/ discriminating Polish persons in contacts with their children supervised by the Child and Youth Welfare Council
- 5/ the situation of Poles settling down in the borderland area

Answer to point 1/ The topic of the status of the Polish community in Germany, apart from the above mentioned debate about the ratification of the Treaty, was raised also later. On 17 June 1999 (on the occasion of the 8th anniversary of signing the Treaty) a group of MPs represented by Halina Nowina-Konopka (Parliamentary Circle of Polish Alliance) and Ryszard Matusiak (independent MP) submitted to the government an interpellation concerning the situation of Poles in Germany (interpellation No. 2099). The MPs demanded that the government takes adequate measures to reinstate the status of the national minority for the Polonia in Germany in the context of such status being granted to Sinti and Roma who arrived in Germany (that is who do not inhabit the traditional home territory) and who do not live in compound communities, and who therefore also do not meet the criteria which are used to refuse to regard the German Polonia as a minority.

The issue of the lack of a minority status was also raised by Jan Dobrosz on behalf of the Parliamentary Club of the Polish Peasant Party (21 June 2001).

⁵⁵ Shorthand report from the 33rd session of the Sejm, 5th term from 25 Jan 2007, p. 128.

⁵⁶ Ibidem.

Gabriela Masłowska, an MP for the Law and Justice Party (PiS) addressed her interpellation to the President of the Council of Ministers in which she demanded from the Polish government to launch negotiations with the German government concerning repealing the resolution from the Nazi times which revoked the rights of the Polish minority⁵⁷. The reply provided by Jan Borkowski, the secretary of state in the Ministry of Foreign Affairs reads that, among others: “the Potsdam Agreement from 2 August 1945 introduced a general rule of superiority of the occupational law above the German law, especially in the scope of these legal acts which are of a discriminating nature” (...) “Additionally art. 123 of the Basic Law from 1949 states that: <<the laws from the period before the assembly of the federal parliament is still binding as long as they do not contradict the Basic Law>>”. Jan Borkowski concluded by saying that the directive from 27 February 1949 about the liquidation of Polish organizations and nationalization of their property was undoubtedly in contradiction with the principles set out in the Basic Law, thus it ceased to be binding after the war.

Answer to point 2/ According to the Foreign Ministry the problems of Polonia with the lack of opportunities to teach Polish in German state schools stem from the fact that the educational issues remain in the capacity of the authorities of the constituent countries. As the Polish Foreign Minister, Bronisław Geremek explained to the Polish Senate the fact that the Polish community is dispersed over the German territory is unfavourable to the introduction of teaching the Polish language within the German system of education. In some large cities like Bremen, Düsseldorf, Bonn, Köln, Bergisch-Gladbach, Duisburg and Bremerhaven teaching Polish as a native language was introduced in the form of supplementary classes (*muttersprachlicher Ergänzungsunterricht*). Minister B. Geremek also informed that in 1998 a German-Polish European School was established in Berlin-Charlottenburg. Nevertheless, he noted that progress in this area requires also “a decisive and consistent attitude of the Polonia communities”⁵⁸.

The MP, Stanisław Kalemba during the parliamentary debate on the occasion of the 10th anniversary of the Treaty spoke about the limited and underfunded teaching of the Polish language in Germany (21 June 2001).

Aleksander Zajac, the head of the Convent of Polish Organizations in Germany in his speech from 30 April 2002 delivered during the 15th session of the Polish Senate said that the German side consistently refuses to protect the Polish ethnic group in Germany and the situation of the German Polonia is steadily deteriorating.

He added that the problems concerning the teaching of the Polish language in state schools and financing the Polonia community schools in constituent countries are still awaiting a solution.

⁵⁷ Interpellation No. 11196 from 27 Aug 2009.

⁵⁸ Information from the Foreign Minister, Bronisław Geremek from 27 Jul 1999 in reply to the statement by the Senator, Józef Kuczyński made during the 37th session of the Senate.

The Senator, Czesław Ryszka (PiS) in his speech from 20 June 2006 for the joint committees for Culture and Mass Media and for Emigration and Contacts with Poles Abroad on the occasion of the 15th anniversary of signing the Polish-German Treaty on Good Neighbourship said that

“Altogether 6,300 children learn the Polish language in Germany. This includes about 2,300 children learning within the system of German state schools and 4,000 in schools which function within the Polonia organizations, with the largest schools run by the Christian Centre for Disseminating Polish Culture, Traditions and Language in Germany, the society functioning within the Polish Catholic Mission in Germany, by the Polish Homeland School in the North-Rhine and Westphalia, and the Polish School Society ‘Oświata’ in Berlin. The German state provides financial support for the teaching of Polish as a foreign language in state schools for about 2,300 children, although this support is not equal everywhere, whereas the Polonia organizations provide education for 4,000 children and they receive only symbolic financial support in the range of 10,000 Euros”.

The senator claimed that the main factor which hinders the teaching of Polish as a native language within the Polonia associations is the lack of financial resources caused first of all by the unwillingness on the German side to fulfill the resolutions of the Treaty from 17 June 1991 concerning teaching Polish as a native language.

In the same context it was said many times in the Parliament that the financial means from the Polish budget for the German minority in the Opole region are disproportionately higher than the funds granted by the Germans for the Polish minority in their country.

Answer to point 3/ In the above mentioned interpellation No. 2099 from 17 June 1999 the MPs drew attention to the lack of respecting the rights of Poles in Germany which are guaranteed by the Treaty including the lack of financing by the German side towards the functioning of the Polonia organizations. When replying to this interpellation the Polish Foreign Minister, B. Geremek stated that in 1999 the German side allocated 391,000 DM from the federal budget for financing the Polonia cultural projects which encompass at least three constituent countries; however up to the moment of the minister’s reply only six applications were approved of for the total amount of 70,000 marks. The Minister also added that the Polonia organizations in the Federal Republic of Germany receive in many constituent countries grants for cultural events organized on a smaller scale. To illustrate, in 1998 the cultural activity including educational projects of the Berlin Polonia organizations received funding of ca. 270,000 DM⁵⁹.

When answering the interpellation by the MP Jan Kulas from 11 June 2008 (interpellation No. 3574) concerning the situation and the care over the Poles in Germany provided by the Polish state, Grażyna Bernatowicz, the secretary of state in the Foreign Office said that there were around 200 Polonia organizations in Germany. The Association of Poles in Germany and The Association of Poles ‘Zgoda’ have their own federal structures. The remaining organizations are associated in several

⁵⁹ Reply of the Ministry of Foreign Affairs to the interpellation No. 2099 from 13 Jul 1999.

umbrella organizations; Congress of the German Polonia associates 25 organizations, the Christian Centre for Disseminating Polish Culture, Traditions and Language in Germany includes 25 local organizations, whereas the Polish Council in Germany, a federal association includes 106 organizations. The Polish Catholic Mission is the most important organizer of the Polonia's religious life. It employs over 100 Polish priests. Minister G. Bernatowicz admitted that the Polonia communities do complain about the problems with obtaining funds from the federal authorities to finance their statutory activity, especially for the Polonia education. She put the blame for the present state of affairs on the representatives of various governmental bodies who do not have sufficient knowledge of the commitments stemming from the Polish-German Treaty. She also said that in Germany there is "lack of real political will to realize them"⁶⁰.

It was repeated in the document that the Polish authorities are in a continuous dialogue concerning this matter with the German partners (On 17 January 2008 the under-secretary of state in the Ministry of Education, Krzysztof Stanowski took part in a session of the Permanent Polish-German Working Group for Teaching Polish and Polish Studies in the Federal Republic of Germany; On 11 April 2008 the secretary of state in the Foreign Office, Jan Borkowski held meetings with the representatives of the governments of the North-Rhine and Westphalia, and Hessen where he raised the question of the availability of teaching Polish in Germany)

Answer to point 4/ An interpellation was sent to the Foreign Minister much earlier, on 22 December 2005 by the MP, Jacek Tomczak concerning the cases of discriminating Poles in Germany in contacts with their children supervised by the Child and Youth Welfare Council (*Jugendamt*) which were publicized in 2008 in the Polish media⁶¹.

The MP provided examples of discrimination against Polish parents from mixed marriages who after a divorce faced difficulties in contacts with their children, and during their meetings which were taking place under the supervision of a German official they were forbidden to use the Polish language. The interpellation included information that the parents with such concerns sent a letter on the matter to the Petition Committee in the European Parliament.

The MP issued an appeal for intervention to the Polish Ministry of Foreign Affairs and the subordinate consular services in Germany.

Minister Stefan Meller in his reply to the interpellation on 18 January 2006 stated that "there is a lack of sufficient evidence to conclude that the German institutions use discrimination practices towards Polish citizens", which would necessitate formal protests directed at the German Foreign Office and the Federal Ministry for Families, Senior Citizens, Women and Youth. He also accused the press publications which described such cases of insufficiently balanced and objective judgment. Ac-

⁶⁰ Reply of the Ministry of Foreign Affairs to the interpellation No. 3574 from 23 Jul 2008.

⁶¹ Interpellation No. 453 from 22 Dec 2005.

According to the Minister similar problems have also been reported by parents of other nationalities who live in Germany. For example, in 1999 the number and the specific gravity of such legal disputes in German-French relations caused that a special mixed mediation group was established with the participation of the representatives of the foreign offices and parliaments from both countries.

The Minister observed that Polish citizens in Germany constitute the largest group in all mixed marriages (for example, only in 2004 about 6,000 Polish-German marriages were contracted). With reference to this he concluded that establishing a Polish-German mediation group, following the example of France and Germany, should be considered⁶².

Answer to point 5/ Especially in 2008 the topic of Poles settling in the borderland areas on the territory of Germany and acts of violence against them (e.g., destroying their property) was raised in the questions and interpellations of MPs.

The Civic Platform (PO) MP, Sławomir Nitras informed that, for example in the borderland administrative district of Ücker-Randow out of 70,000 inhabitants there are 5,000 Poles. In some areas of the district Polish people constitute 30% of their residents. Unfortunately, because of the fact that the populist far-right parties are vastly supported in these areas acts of violence against Poles do occur. The MP issued an appeal to the Polish government to formulate a policy aimed at protecting the interests of these communities⁶³.

Apart from the above mentioned issues another topic raised in the Parliament referred to granting privileges to the German minority in Poland during the parliamentary election with reference to making it exempt from the condition of exceeding the 5% threshold of votes, while Poles in Germany do not have a chance to sit in the Landtags or in the Bundestag from Polish lists (Jan Dobrosz, MP).

In 1999 Minister B. Geremek assured the MPs that the Polish side makes endeavours towards a fuller realization of the rights of the Polonia communities by the German authorities, as well as towards maintaining current contacts with the representatives of the Polish organizations. As an example of such interventions he gave March 1998 when the head of the Consular Department of the Polish Embassy presented the stance of the Polish Embassy in these matters to the director of the relevant department in the German Foreign Office; also in May 1998 the ambassador of Poland submitted *pro memoria* and held talks with the under-secretary of state in the German Foreign Office; in June 1998 the ambassador of the Republic of Poland in his talk with the secretary of state in the Federal Foreign Office firmly emphasized the right of the Polish community to a full sovereign choice of form of their representation towards the German authorities. Also Minister Stefan Meller and the under-secretary of state, Grażyna Bernatowicz assured that they held similar meetings and interventions.

⁶² Reply of the Ministry of Foreign Affairs to the interpellation No. 453 from 18 Jan 2006.

⁶³ Shorthand report from the 20th session of the Polish Parliament, 6th term from 24 Jul 2008.

CONCLUDING REMARKS

In the Parliament of the Republic of Poland it was frequently emphasized with satisfaction that the regulations concerning the minority rights in the Polish-German relations were in the Treaty from 1991 based on international standards (documents of the CSCE and the Council of Europe), and not on the special decisions of both countries which were valid in the inter-war period.

Attention was drawn to the fact that the above mentioned articles of the Treaty became a model solution for regulating similar issues in other countries.

Unfortunately, as follows from the presented materials these regulations with reference to the Polonia communities in Germany have not been and are not at present fully realized.

The present Minister of Foreign Affairs, Radosław Sikorski in his parliamentary exposé from 8 April 2010 said, among others, “In the scope of reviewing the realization of the Polish-German Treaty we shall look for better ways of the realization of the rights of the Polish minority in Germany and the teaching of the Polish language”⁶⁴.

The prevalent opinion among the Polish analysts of the Polish-German relations is that the terminological disparity used in the treaty with reference to the German minority in our country and the Polish group in Germany is not an obstacle in the realization of the rights stemming from its articles. They argue that in the situation of such diversity within the Polonia if the term “Polish minority” was used some persons would become excluded from the guaranteed protection and deprived of the opportunity to enjoy the rights they have at present. This primarily refers to the group of *Aussiedlers* who maintain the spirit of Polish identity.

It is well known that the German side is not willing to grant minority status to new groups, besides the four recognized groups (*anerkennungte, angesiedelte Minderheiten*) for fear of a flood of claims from other national groups (e.g., Turks).

Mieczysław Gil, an MP when speaking on 13 September 1991 on behalf of the Civic Parliamentary Club during the debate on the ratification of the Treaty expressed hope that the articles concerning the German minority in Poland and the Polish communities in Germany should facilitate the “the role of both communities as a uniting and not antagonizing agent for both nations”⁶⁵. Also the representatives in the Bundestag expressed their desire for both groups to act as a bridge and a mediator in closer cooperation between both states. However, looking at the role of the

⁶⁴ *Information of the Foreign Minister concerning the guidelines for Polish foreign policy in 2010*, submitted during the 64th session of the Polish Parliament, 6th term (orka2.sejm.gov.pl/Debata6.nsf/main/583C4C86, accessed on 30 Oct 2010).

⁶⁵ Shorthand report from the 73rd session of the Polish Sejm, in: *Polska – Niemcy...*, p. 126.

German minority in Poland and the role of Poles in Germany from the perspective of 20 years since the signing of the Treaty it needs to be concluded that these postulates have not indeed been realized.

The hope in this matter is at present located within the work done by the so called Polish-German quadrangle, with the participation of the Polish and German governments and representatives of the German minority in Poland and Poles in Germany, which is aimed at ensuring a better realization of the rights that the group described in this article is eligible for in line with the Treaty.