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## **The Nation–State Relation in the Constitution of the Republic of Poland**

**Keywords:** sovereignty of a nation, sovereignty of a state, political meaning of the term “nation”, identity of the polish nation, nation–state relation

**Słowa kluczowe:** suwerenność narodu, suwerenność państwa, Naród w znaczeniu politycznym, naród w znaczeniu etnicznym, tożsamość narodu polskiego, stosunek narodu do państwa

### **Abstract**

The subject of this study is to determine the mutual relations in which the creator of the Constitution of the Republic of Poland of 1997 located the nation and the state. The text presents two opposing trends, showing how this relationship is perceived in the literature of the so-called Western countries and countries that have joined this group in recent decades. Arguments pointing to the empirical truth of the current presented by Polish representatives of science – the East European trend were presented. It was pointed out that the state is not an indispensable nation-building criterion, and thus that the state is not always primary toward the nation. Then, two concepts of the nation adopted in the Constitution of the Republic of Poland were presented, and it was shown that the expectations of the “political nation” and the “cultural nation” toward the organs of state authority may refer to completely different spheres of state activity.

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**Streszczenie****Relacja naród–państwo w Konstytucji Rzeczypospolitej Polskiej**

Przedmiotem niniejszego opracowania jest ustalenie, w jakich wzajemnych relacjach twórca Konstytucji RP z 1997 r. usytuował naród i państwo. W tekście przedstawiono dwa przeciwstawne nurty, wskazujące, jak postrzegany jest ten stosunek w literaturze tzw. państw zachodu oraz państw, które wstąpiły do tego grona w przeciągu ostatnich dekad. Przedstawione zostały argumenty wskazujące na empiryczną prawdziwość nurtu prezentowanego przez polskich przedstawicieli nauki – nurtu wschodnioeuropejskiego. Wskazano, iż państwo nie jest nieodzownym kryterium narodotwórczym, a co za tym idzie, iż państwo nie zawsze jest pierwotne względem narodu. Następnie zaprezentowano dwie koncepcje narodu przyjęte w Konstytucji RP oraz wykazano, że oczekiwania „narodu politycznego” i „narodu kulturowego” względem organów władzy państwowej odnosić się mogą do zgoła odmiennych sfer działalności państwa.

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There is no uniformity in world literature as to the determination of relation of a nation to a state. The Western trend (to which i.a. Great Britain, United States, France, Switzerland belong) underlines the prioritized meaning of the state, which, undertaking activities of educational character, leads to unification of language and culture, as well as introduces uniform legal solutions. As an effect, undefined people are transformed into a community – a “political community”, as J.J. Rousseau stated – inhabiting a common territory, for which language, culture and patriotism are only tools of political unification<sup>2</sup>. The East European trend, also known as Middle European trend (to which also Germany and Italy are included, along states located in geographical region determined in the name of the trend<sup>3</sup>), un-

<sup>2</sup> W. Konarski, *Naród, mniejszość, nacjonalizm, religia – przyczynek do dyskursu o pojęciach i powiązaniach między nimi*, “Forum Politologiczne” 2007, vol. V, pp. 22, 26; A. Chmielewska, *Naród – państwo – tożsamość. Odmiennność perspektyw starych i nowych państw członkowskich Unii Europejskiej*, “Studia Europejskie” 2006, No. 1, pp. 29–30.

<sup>3</sup> It is worth to stress that the necessity of binding such countries as Germany and Italy with the Middle European concept of a nation, and as a consequence – with eastern nation-

derlines the paramount meaning of national community and its culture. In this concept the nation is – as J.G. Herder stated – a “cultural community”, the purpose of which is the creation of a state and existence within its borders<sup>4</sup>. The state is perceived as a space functioning within a geographically determined borders. It does not decide on the existence of a nation, as the latter has independent power to defy political structures, should they force a foreign national culture on a community<sup>5</sup>. It is the strength of a cultural nation that allows it to survive through centuries despite lack of own state, and even in conditions when its language and traditions are being eliminated and history falsified.

The functioning of the two aforementioned extreme currents proves that no simple dependencies exist between a nation and a state. They are not equivalent, nor there are relations of supremacy or subordination between them<sup>6</sup>. Literature of the subject presents examples of nation-building criteria proving that for an existence of a nation, the existence of a state itself is insufficient. Depending on the views of a given researcher, a different sequence of the criteria is presented and therefore a different value of the aforementioned is shown. Those criteria are: 1) territory, state or a different political status, language, culture, history and national awareness (J. Krejčí, V. Velimsky); 2) territory, language, religion or common ethnicity and awareness of national distinguishing characteristic, as well as showing attachment to it (J.G. Kellas); 3) national awareness, language, historical experiences, geography, religion and overall cultural factors (M. Ryan); 4) symbolic as a common resource of thoughts and feelings, the sense of community between people of different status and social classes, the fact of existing in the past or in the present of their own state, as well as show-

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alism, is supported by examples in constitutional law literature. B. Banaszak indicates that in XIX century in Italy, views justifying uniting were dominative (P. Mancini and G. Mazzini). According to such views, states should be built basing on a national principle. According to the concept, the Nation is a source of authority in the state and it should be regarded as a subject of international law. B. Banaszak, *Prawo konstytucyjne*, Warsaw 2008, p. 267.

<sup>4</sup> W. Konarski, op.cit. pp. 21–23; A. Ławniczak, *Ewolucja pojęcia „naród” w polskich konstytucjach*, “Acta Universitatis Wratislaviensis” 1992, No. 1290, Prawo CC, pp. 140–141.

<sup>5</sup> A. Chmielewska, op.cit., pp. 32–35; J. Marszałek-Kawa, D. Plecka (eds.), *Dictionary of Political Knowledge*, Toruń 2019.

<sup>6</sup> A. Ławniczak, op.cit., p. 140.

ing the will of creation of such state or autonomy (M. Waldenberg)<sup>7</sup>. At the same time, it is presented in the literature that those elements may have subjective or objective meaning. The objective ones are territory, language and culture, while subjective – national awareness, the awareness of distinguishing characteristic<sup>8</sup>.

The fact that a nation is able to exist separately of a state, and even despite having no state at all, has been proven on the example of history of Poland. At the turn of XIXth and XXth century, the works of western authors presented the concept of the state as a nation-building factor and arguments supporting other concepts were denied evidential status. The theory of F. Znaniecki has been a turning point in this matter, as his scientific method discarded speculations not supported by facts. The author – using the Polish example – had proven that there are states in which a nation is a society of a given national culture<sup>9</sup>. The scientific level and achievements of this researcher and the fact that his works were published in English enabled to break the hitherto front of uniform thinking about the relation of a nation to a state.

It is interesting how the matter in question has been related to by the Polish constitutional legislator in the constitution of the Republic of Poland of 1997. Did he, in the face of transformation, decide to use the western countries concept, as an anti-communist model, or did he place elements of this model in the Polish constitutional tradition. To answer the question, it is worth to determine which concept of a nation has been adopted by the constitutional legislator in the Constitution of the Republic of Poland and which role has been given to the state. Due to capacity frames of the hereby paper, there is not much place for elaborated divagations on the frame of constitutional definitions of the terms “nation” and “state”. The termination of designates of these terms shall be limited to finding borders that should enable determination which type of relation can be found between those subjects.

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<sup>7</sup> W. Konarski, *op.cit.*, pp. 19–21.

<sup>8</sup> History shows that meeting many from the presented criteria is not decisive for regarding the right of a given community to exist within the frames of a separate state, if international organizations and states exercising power over the given territory do not express consent. On the other hand – the lack of some or most of subjective elements do not prevent a given society from regarding itself as a separate nation. *Ibidem*, p. 20.

<sup>9</sup> Keyword: Znaniecki Florian Witold, <https://encyklopedia.pwn.pl/haslo/Znaniecki-Florian-Witold;4001956.html> (6.11.2020).

To achieve the aforementioned aim, firstly it is important to look at the introduction that stipulated “we, the Polish nation – all citizens of the Republic (...) adopt the Constitution of the Republic of Poland”. This content indicates adopting by the legislator a political or the social and philosophical meaning of the term “nation”<sup>10</sup>. It is understood as a community that creates its own state, which is not influenced by ethnical membership of its members<sup>11</sup>. The Constitutional Tribunal decided that by using such term, the legislator clearly communicated that for the determination of the membership to (understood in such way) Polish nation no (except citizenship) factors are important, like nationality, race, or religion, and the essence of belonging to Polish nation understood in such way is the state sense expressed by having Polish citizenship<sup>12</sup>.

Adoption of the political concept of the nation is justified by the needs of election law, according to which having a citizenship is one of the criteria enabling to take part in the election process. The Constitution stipulates that the nation exercises supreme power by representatives or directly. Regarding the issue of the relation of a nation to a state it should be underlined that – according to individualistic concept of human rights – representative bodies chosen in elections should undertake decisions aimed at realization of freedoms and rights of individuals and not interests of authorities. The authority of a nation consists in the ability to articulate common will, which should be respected by public authorities<sup>13</sup>. The latter is not “a bearer of sovereignty, but it’s representative”<sup>14</sup>.

Adoption of political concept of a nation is just from historical point of view. Views on the negative consequences of lack of distinction between a “na-

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<sup>10</sup> Interestingly, the political understanding of the term “Nation” used in Art. 4 is regarded as supported by provisions on special entitlements of citizens not regarding themselves as members of the Polish nation in an ethnical meaning (see: Art. 27 and 35). P. Sarnecki, *Idee przewodnie Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 r.*, “Przegląd Sejmowy” 1997, No. 2, p. 19.

<sup>11</sup> B. Banaszak, op.cit. p. 271; P. Sarnecki, op.cit., p. 19.

<sup>12</sup> Judgement of the Constitutional Tribunal of September 21, 2015, ref. K 28/13.

<sup>13</sup> P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warsaw 2000, p. 16.

<sup>14</sup> A. Bień-Kacała, *Suwerenność państwa i zwierzchnictwo narodu a status prawny jednostki*, [in:] *Środki ochrony praw człowieka w państwach postsocjalistycznych. Zagadnienia wybrane*, eds. A. Frankiewicz-Bodynek, A. Pawlak, Kraków 2015, pp. 31–32.

tion” and a “race” has been presented as early as in 1882 by E. Renan. He presented that all states are characterized by a merger of nations that were a part of those states. A contemporary nation is a “historical effect of a large number of facts affecting in one and the same direction”<sup>15</sup>. According to this author – race, religion, common interests, geography or even language do not have a decisive meaning for the existence of a nation<sup>16</sup>. A nation is determined by a long history of efforts, sacrifices and contributions. It is therefore a spiritual dogma, an effect of deep historical complications. It comprises of essential conditions of national existence, i.e. social capital of the past (heroic past, famous people), on which the national idea is grounded, the will of a common present and the urge to create great acts now and in the future. A nation is a huge solidarity with happiness and suffering borne by ancestors in the name of values which are important today and the clearly worded will of continuous coexistence. A nation is an everyday plebiscite<sup>17</sup>. The author adopted the standpoint of free will of individuals that are bond into a nation by subjective factors.

One should not deny the important role of other, presented by E. Renan, factors. In reality none of the aforementioned factors of existence of a nation is able to create a nation without other ones<sup>18</sup>. In regard to the Poles, it is said that the language is an element of their personification and bond more than common morality, mentality, political culture and even religion<sup>19</sup>. At the same time A. Kłoskowska presents that the language is not an important element in any national culture, as for the character of different nations, a different element of culture might be important<sup>20</sup>.

The important role of nation-building factors is also understood by the representatives of Polish constitutional law. B. Banaszak, relating to the

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<sup>15</sup> E. Renan, *Co to jest naród? Odczyt miany na Sorbonie, dnia 11 marca 1882 roku*, [in:] *Dzieła Ernesta Renana* (selected), “Studia historyczne i filozoficzne”, vol. I, Warsaw 1904, pp. 2–11.

<sup>16</sup> Ibidem, pp. 15–30.

<sup>17</sup> Ibidem, pp. 30–33.

<sup>18</sup> K. Zeidler, *Restytucja dóbr kultury ze stanowiska filozofii prawa. O trudnych przypadkach na granicy kultury i prawa*, Warsaw 2011, p. 183.

<sup>19</sup> M. Bartoszewicz, *Język polski i jego ochrona prawna w porządku konstytucyjnym Rzeczypospolitej Polskiej*, Warsaw 2017, p. 126.

<sup>20</sup> A. Kłoskowska, *Kultury narodowe u korzeni*, Warsaw 2005, p. 39.

meaning of the concept of nation in the Constitution of Republic of Poland, explains that this is a group of people separate from other groups, aware of this fact and acting according to that awareness<sup>21</sup>. A. Ławniczak explains broadly that the nation is a “team of people that remain in the range of influence of a given set of values, related to as national culture. Some experiences or some method of experiencing make members of a national community closer. After all, in order for cultural goods to be created, some kind of historical process has had to take place (...) The awareness of historical and cultural continuity is very important (...) Therefore, the term nation is comprised of history, culture, memory about ancestors and the hope for further existence in a national community”<sup>22</sup>. Those authors agree that the nation is not a sum of individuals living in a given state, it is not only the currently living generation. A nation is comprised of future and previous generations<sup>23</sup>.

It could be regarded that the preamble to the Constitution of the Republic of Poland combines the constitutive – as stated by E. Renan – condition of the existence of a nation (solidarity with ancestors and the will of future existence) with the ideas of Middle European concept of a nation<sup>24</sup>. It stipulates that the Polish nation – all citizens of the Republic of Poland “Having regard for the existence and future of our homeland (...) beholden to our ancestors for their labors, their struggle for independence achieved at great sacrifice, for our culture (...) obliged to bequeath to future generations all that is valuable from our over one thousand years’ heritage (...) hereby establish this Constitution of the Republic of Poland as the basic law for the state”. From the combination of the mentioned content it results that the Polish nation has established the Constitution to guarantee the existence and future of their Homeland which is a creation more fundamental than the state<sup>25</sup>. Determination that a nation establishes the basic act for the state is also uniform with

<sup>21</sup> B. Banaszak, *op.cit.*, p. 271.

<sup>22</sup> A. Ławniczak, *op.cit.*, p. 141.

<sup>23</sup> *Ibidem*; B. Banaszak, *op.cit.*, p. 267.

<sup>24</sup> According to this concept, it is the nation and culture created by it is the reason of creation and existence of states and public authorities. A. Chmielewska, *op.cit.*, pp. 31, 32–33; W. Konarski, *op.cit.*, pp. 23, 36.

<sup>25</sup> M. Piechowiak, *Preambuła*, [in:] *Konstytucja RP. Komentarz. Art. 1–86*, vol. I, eds. M. Safjan, L. Bosek, Warsaw 2016, p. 132.

international law<sup>26</sup>, within the framework of which the right of nations to self-determination is accepted, and which right is expressed by the freedom of nations to determine their own political status and the freedom of ensuring their own economic, social and cultural development.

It should also be noted that using the political meaning of the term “nation”, the Constitution uses for its wording capital letters<sup>27</sup>. Such spelling is used also an Art. 4, which stipulates that the supreme authority in the Republic of Poland lies within the nation, in Art. 104 stipulating that the members of parliament are representatives of the nation, or Art. 127 indicating that the President of the Republic of Poland is chosen by the nation<sup>28</sup>. However, the Constitution of the Republic of Poland also stipulates a provision in the content of which the term “Polish nation” has been worded with small letters. It is Article 6 section 1, which stipulates that “The Republic of Poland creates the conditions of propagation and equal access to goods of culture that is the source of identity of the Polish nation, its continuation and development”.

In literature, many views, according to which using small letters indicate the ethical concept of the term used in Art. 6 sec. 1, may be found<sup>29</sup>. However, the Constitutional Tribunal decided that the legislator “regards Polish nation (spelled in small letters) as a community not ethnical (in the narrow meaning of »blood ties«...), but cultural”. The latter is defined as an existing through generations community bond by different bonds – i.a. blood, language, culture, religion, and in which in different circumstances and times, different of the aforementioned bonds were regarded as the most important

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<sup>26</sup> Art. 1 of the International Covenant on Civil and Political Rights, adopted in New York on December 16, 1966 (Dz.U. 1977, No. 38, item 167).

<sup>27</sup> Commenting on the fact of using capital letters in the term “Polish nation” in the March Constitution, A. Ławniczak states that by such wording the systemic lawgiver intended to indicate the driving force, main factor that enable the state to be reinstated. This term “encompassed permanent values with which all Polish citizens should identify”. A. Ławniczak, *op.cit.*, pp. 144–145.

<sup>28</sup> W. Sokolewicz, *Rozdział I „Rzeczpospolita”, artykuł 1*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warsaw 2007, p. 24.

<sup>29</sup> P. Sarnecki, *op.cit.*, p. 19; W. Sokolewicz, *op.cit.*, p. 24; W. Skrzydło, *Konstytucja Rzeczypospolitej. Komentarz*, Warsaw 2013, p. 20; B. Banaszak, *op.cit.*, p. 272; M. Florczak-Wątor, *Artykuł 4*, [in:] *Konstytucja RP. Komentarz. Art. 1–86*, vol. I, ed. M. Safjan, L. Bosek, Warsaw 2016, pp. 270–271; K. Zeidler, K. Zeidler, *Prawo ochrony dziedzictwa kultury*, Warsaw 2007, p. 28.

ones<sup>30</sup>. The Tribunal therefore discarded the ethnical concept, deciding the “Polish nation” is not comprised of persons that are “pure” Poles. In the content of analyzed provision the legislator related to a community that existed and developed on the basis of a feeling of identity built on values of common culture<sup>31</sup>. Members of such nation express particular respect for culture that render being Polish and adopt a standpoint that the existence and future of the Polish nation depend popularization of values coded in culture. Therefore, they are engaged in protection of cultural heritage and bequeathing it to future generations.

Based on the mentioned knowledge, one could draw the following conclusions. The sovereignty of a nation should be regarded as original in relation to sovereignty of a state. A nation – using its right to self-determination – creates a sovereign state and establishes a constitution for it, in order for the bodies of the state to safeguard its justified needs. However, using by the legislator two concepts of a nation results not only in the fact that the scope of the terms covers both of them to some extent. After all, the expectations of members of the nation from each of these groups regard a different type of the state’s activity. For the existence of the political nation, the functioning of structures of the state, the protection of its independence and integrity of territory, maintaining security of the citizens, their freedoms and rights, and environmental protection, are essential. For the members of the cultural nation, it is important to create conditions for popularization and equal access to such culture that determines the identity of the nation, its existence and development. Of course, independence and integrity of territory are also important for the Polish nation, although it is not due to politics, economic stability or personal security. As far as the cultural community regards, the establishment of the state and its bodies should serve the protection of accepted by the community cultural values and enable generational transition of them. Thus, it is important that the state made easier for the members of the Polish nation to undertake such activities, which during times of annexations, wars and occupations are restricted or prohibited (using national symbols, mother

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<sup>30</sup> Judgement of the Constitutional Tribunal of September 21, 2015, ref. K 28/13.

<sup>31</sup> A. Młynarska-Sobaczewska, *Normatywizacja tożsamości zbiorowej w preambułach do konstytucji państw postkomunistycznych*, “Filozofia Publiczna i Edukacja Demokratyczna” 2013, vol. II, No. 2, p. 108.

language, teaching or learning history, commemorating great people). Such role of a state has been given more importance during latest decades. International society started to notice that – manifesting in different activities – destroying of cultural heritage is becoming one of the basic methods of criminal denationalization and is a “cultural genocide”<sup>32</sup>.

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<sup>32</sup> P. Gerstenblith, *The Destruction of Cultural Heritage: A Crime against Property or a Crime against People?*, “*John Marshall Review of Intellectual Property Law*” 2016, vol. 15, No. 336; A. Jakubowski, *Cultural Heritage and the Collective Dimension of Cultural Rights in the Jurisprudence of the European Court of Human Rights*, [in:] *Cultural Rights as Collective Rights an International Law Perspective*, ed. A. Jakubowski, Boston 2016, pp. 161–162.

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