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## **Constitutional Regulations of the Official Language in the European Union Countries**

**Keywords:** constitution, official language, nationality, minorities

**Słowa kluczowe:** konstytucja, język urzędowy, narodowość, mniejszości

### **Abstract**

The regulations concerning the definition of the official language at the constitutional level have not been unified in the constitutions of European Union countries. The importance of a language, the level of its protection, and care for the language are immanently connected with the cultural awareness of a given nation, its historical conditions, national aspirations, and other factors allowing to distinguish it from other subjects. The number of languages used in individual regions of the EU depends on social migrations, the uniformity of nationalities, historical conditions, as well as the level and directions of patriotic aspirations in a given society. Therefore, the attempts to impose on the members of the EU the adoption of the unified solutions, which de facto imply – in the case of most of them – the need to amend the constitution, is a demand that now seems completely unfeasible.

### **Streszczenie**

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Regulacje dotyczące określenia języka urzędowego na poziomie konstytucyjnym nie zostały zunifikowane w ustawach zasadniczych państw Unii Europejskiej. Znaczenie języka, poziom jego ochrony oraz dbałość o język są immanentnie związane ze świ-

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adomością kulturową danego narodu, uwarunkowaniami historycznymi, dążeniami narodowościowymi i innymi czynnikami pozwalającymi na wyróżnienie się od innych podmiotów. Liczba używanych języków na poszczególnych obszarach UE jest zależna od migracji społecznych, jednolitości narodowościowej państwa, uwarunkowań historycznych, a także poziomu i kierunków dążeń patriotycznych w społeczeństwie. Wymuszenie zatem na członkach UE tożsamych rozwiązań, implikujących de facto w większości z nich konieczność zmiany ustawy zasadniczej jest obecnie zadaniem całkowicie niewykonalnym.

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## I.

The regulations concerning the definition of the official language at the constitutional level have not been unified in the constitutions of the European Union countries<sup>2</sup>. The legal regulations of individual countries differ concerning different – often mutually exclusive – factors determining the specific nature of the statehood and national spirit of a given country. The importance of a language, the level of its protection, and care for the language are intrinsically linked to a nation's cultural awareness, its historical conditions, its national aspirations, and other factors that make it possible to distinguish itself from other subjects<sup>3</sup>.

The issue of protecting the Polish language is regulated in Art. 27 of the Constitution. This provision states that “Polish shall be the official language in the Republic of Poland”. This provision shall not infringe upon national minority rights resulting from ratified international agreements.

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<sup>2</sup> J. Galster, *O zjawisku fetyszyzmu w prawie konstytucyjnym*, [in:] *Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracji*, eds. L. Garlicki, A. Szmyt, Warsaw 2003, pp. 78 et seq.

<sup>3</sup> A. Ławniczak, R. Balicki, *Wizja narodu w konstytucjach wybranych państw europejskich*, [in:] *Państwo i prawo wobec współczesnych wyzwań: księga jubileuszowa Profesora Jerzego Jaskierni, t. 1, Teoria i filozofia państwa i prawa oraz aksjologia demokracji i ochrony praw człowieka*, eds. R.M. Czarny, K. Spryszak, Toruń 2012, pp. 431 et seq.; S. Łęcki, *Polityka językowa Norwegii w latach 1814 – 1981*, Wrocław 1990, pp. 132 et seq.

## II.

Due to the inclusion of a provision in Chapter I of the Constitution entitled ‘The Republic’, we can speak of the rigid nature of the regulation in question. The much more difficult legislative procedure adopted in this context (Art. 235(5) and (6)) results in the impossibility of quickly changing the official language to another. Moreover, the solution adopted also determines the fact that a monolingual system is in force in Poland<sup>4</sup>. It should be emphasized that the concept of rigid regulation of the language – which is binding in the Polish legal system – sometimes is criticized as a solution, which is discriminatory and inconsistent with the legal systems in force in democratic states. It is difficult to agree with this thesis, because the value of the national language should be protected because of the need to protect numerous additional values, such as culture, art, national heritage, and so on. This position is all the more justified because, according to the content of Art. 27, second sentence, of the Constitution, the legislator may, within the scope specified in the agreements, also allow the use of other languages in the area of the functioning of public administration units<sup>5</sup>. It should be pointed out that several dozen international agreements are currently being concluded, which relate to the requirement of reciprocal guarantees of access to the language and culture of the country – a signatory to a given agreement – the requirement to support initiatives and institutions promoting the language and to take action aimed at enabling national or ethnic minorities to undertake education in their mother tongue<sup>6</sup>.

The value of the Polish language expressed in the Constitution is also correlated in a systemic sense with the provisions of the Art. 5 of the Constitution. This provision states that public authorities must guard the national heritage. Admittedly, the very concept of ‘national heritage’ does not have

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<sup>4</sup> J. Trzeciński, *Język urzędowy – art. 27 Konstytucji*, [in:] *Konstytucja, ustrój, system finansowy państwa. Księga pamiątkowa ku czci Prof. Natalii Gajl*, eds. T. Dębowska-Romanowska, A. Jankiewicz, Warsaw 1999, p. 49; J. Marszałek-Kawa, D. Plecka (eds.), *Dictionary of Political Knowledge*, Toruń 2019.

<sup>5</sup> M. Trzebiatowski, *Zasada wykonywania czynności urzędowych w języku polskim*, “Przeгляд Legislacyjny” 2011, No. 1, p. 68–100.

<sup>6</sup> Agreements on the protection and support of language development were concluded, inter alia, with the Czech Republic, Ukraine, Russia and Romania.

a universal definition, including a legal one, but it should be interpreted taking into account all possible areas allowing effective protection of its origins and creations. The spectrum of these areas can be defined partly in the light of the definition adopted in the dictionary of the Polish language, which indicates that national heritage means “goods of culture, science, art, etc. which we have inherited from previous generations”<sup>7</sup>. The doctrine emphasizes that “cultural heritage can be divided into tangible and intangible heritage (...) the intangible elements which constitute the cultural heritage of a nation include, inter alia, the history or language of that nation”<sup>8</sup>. Moreover, by ‘guarding the national heritage, we are paying back to previous generations this ‘debt of gratitude’, as indicated in the introduction to the Constitution, for their fight for independence and for the culture they have created”<sup>9</sup>. In conclusion, it can be pointed out that an element of intangible cultural heritage is the language that we can encounter when reading books, studies, chronicles, but also prose or poetry.

### III.

Analysis of the content of the Constitutions of the European Union Member States in terms of determining the scale and scope of protection of the national (official) language makes it possible to classify them into three categories of provisions: 1) monolingual states, 2) multilingual (bi-lingual and multi-lingual) countries, 3) states that do not define language issues in the Constitution.

Of all twenty-seven EU members, we have a monolingualism system in eleven countries. The relevant regulations have been adopted in the constitution of Austria, Bulgaria, Estonia, France, Hungary, Latvia, Lithuania, Portugal, Romania, and Slovakia. The individual constitutions clearly state that

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<sup>7</sup> E. Sobol, *Słownik języka polskiego*, Warsaw 2005, p. 1130.

<sup>8</sup> J. Pruszyński, *Dziedzictwo kultury. Teorie. Dylematy restytucji*, “Przeгляд Wschodni” 2002, vol. VIII, pp. 360 et seq.

<sup>9</sup> P. Sarnecki *Komentarz do art. 6 Konstytucji*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Volume I, II edition*, eds. L. Garlicki, M. Zubik, Warsaw 2016; A. Frankiewicz, *Wolność w sferze sztuki i nauki według Konstytucji Polskiej Rzeczypospolitej Ludowej z 1952 r. oraz Konstytucji Rzeczypospolitej Polskiej z 1997 r.*, [in:] *Prawa człowieka – idea, instytucje, krytyka*, eds. M. Sadowski, P. Szymaniec, “Studia Erasmania Wratislaviensia” 2010, No. IV, p. 236.

‘state language’ or ‘official language’ is a strictly defined language. The solution adopted – as it was in the case of Poland – results in the impossibility of introducing any other official language unless appropriate changes are made to the constitution beforehand. This reservation also applies to a possible concept of introducing a second or auxiliary official language. Any try to regulate these issues by law, without, of course, respecting the use of language by national and ethnic minorities, will be considered legally unacceptable.

Some EU constitutions, in turn, have adopted a system of official multilingualism, which may have two options: 1) bilingualism and 2) multilingualism. The first solution is characterized by the fact that the legislator introduced an additional official language of equal importance in addition to the main language of the given country.

As a result, it is possible to communicate in two different official languages when dealing with public administration, local authorities, and other institutions and bodies carrying out public tasks. This solution is currently in force in Cyprus, where, according to Art. 3(1) of the Constitution of Cyprus, Greek and Turkish are the official languages. A similar solution can be found in Ireland, where the Constitution states in Art. 8(1) and (2) that Irish is the first official language, followed by English<sup>10</sup>.

The situation is somewhat different in a multilingual system. In the case of this solution, the Constitution does not provide for a clear minimum or a maximum number of official languages. In principle, the issue remains dependent on geopolitical and national conditions, over which the legislator has little influence. Such regulation is currently in force in Spain, where Art. 3(2) of the Constitution states that, although Castilian is the official language, other Spanish languages are also used in the autonomous communities living in the Spanish territory<sup>11</sup>. In turn, the Slovenian Constitution states that “Slovenian is the official language in Slovenia. In the areas of communes where the Italian or Hungarian national communities live, Italian or Hungarian are also the official languages” (Art. 11). A similar solution has been applied

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<sup>10</sup> K. Maryl, *Irlandia*, [in:] *Systemy polityczne państw Unii Europejskiej, vol. 1*, eds. K.A. Wojtaszczyk, M. Poboży, Warsaw 2013, p. 601.

<sup>11</sup> Cf. K. Complak, *Wolność języka zamiast języka urzędowego*, [in:] *W służbie dobra wspólnego. Księga jubileuszowa dedykowana profesorowi Januszowi Trzczińskiemu*, eds. R. Balicki, M. Masternak-Kubiak, Warsaw 2012, pp. 607–609.

in Croatia, where “in individual territorial units, in addition to the Croatian language and the Latin alphabet, another language and Cyrillic or other alphabets may also be given official language status” (Art. 12).

Multilingualism in both mentioned options implies in practice that both officials and citizens need to know and communicate in several languages. This is not an easy task, as it delegates – to the education system and to parents – the duty to educate society accordingly from the very beginning in a way that ensures that it is possible to communicate with state bodies and institutions in the future. On the other hand, in some EU Member States, the issue of the official language has been completely omitted from the constitution. This sphere has therefore been referred to the ordinary legislator for regulation. This is currently the case in the Czech Republic, Denmark, Sweden, and Italy, among others. As a result, these legal systems lack any legal framework regulating the number of languages that can have an official language statute. Such flexible regulation results in practice in the possibility, depending on current needs, of dynamically modifying the number and importance of languages that could be used in contacts with public administration and other institutions carrying out state administration tasks.

In addition to the indicated systemic solutions, it is also worth noting that in some countries we may also encounter the constitutionalization of non-verbal languages. In this regard, in the constitutions of Austria and Hungary, the legislator has given particular importance to sign language. Thus, under Art. 8 of the Austrian Constitution, Austrian sign language is recognized as an independent language. In turn, according to Art. H of the Hungarian Constitution, Hungarian sign language is protected as part of Hungarian culture.

Besides, some constitutions also emphasize the significance of awareness of the existence and need to support, respect, and protect the different varieties and language dialects of certain communities living in different regions of the countries<sup>12</sup>. Thus, Art. 8 of the Austrian Constitution emphasizes that “the language and culture, existence and preservation of these ethnic groups are to be respected, safeguarded and to be supported. Article 3 of the Spanish Constitution, on the other hand, states that “the wealth of the different

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<sup>12</sup> J. Zieniukowa, *Języki mniejszościowe w komunikowaniu społecznym. Studia nad funkcjonowaniem języków łużyckich w XIX i XX wieku*, Warsaw 2006, p. 55.

language modalities of Spain is a cultural heritage which shall be the object of special respect and protection<sup>13</sup>.

In conclusion, it should be pointed out that the constitutional regulations concerning the official language in the EU member states have not been unified so far and this process can be considered unfeasible. This state of affairs results, as it has been emphasized before, from the distinctness of individual states in cultural, historical, national, and mental terms. The number of languages used in individual regions of the EU depends on social migrations, the uniformity of nationalities, historical conditions, as well as the level and directions of patriotic aspirations in a given society. However, while the unification of legal regulations and directions of actions taken in the economic area and even in the basic norms defining human and civil rights may be feasible by finding common ground for compromise, the question of language goes completely beyond the legal framework of such regulations. Thus, imposing on the members of the EU the adoption of the same solutions, which de facto imply – in the case of most of them – the need to amend the constitution, is a demand that now seems completely unfeasible.

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<sup>13</sup> R. Hauser, M. Szustkiewicz, *Język skutecznej komunikacji z organem władzy publicznej*, “*Zeszyty Naukowe Sądownictwa Administracyjnego*” 2019, No. 6, pp. 20–34; cf. S. Wronkowska, *O cechach języka tekstów prawnych*, [in:] *Język polskiej legislacji, czyli zrozumiałość przekazu a stosowanie prawa. Materiały z konferencji zorganizowanej przez Komisję Polityki Kultury i Środków Przekazu oraz Komisję Ustawodawczą*, Warsaw 2007, p. 15.

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