

DUAL CITIZENSHIP IN OPOLE SILESIA IN THE CONTEXT OF EUROPEAN INTEGRATION

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Abstract. *In Poland's region of Opole Silesia, ethnic Germans constitute one-third of the populace. Most of them (re-)acquired German citizenship in the 1990s. This also meant obtaining EU citizenship. Thus, they form the largest compact group of German/EU citizens residing outside Germany/the EU. Should Poland join the EU with too long a derogation period on the free movement of its citizens throughout the Union, it would create EU citizenship of two classes in Opole Silesia. With the full set of privileges for German citizens and a restricted one for Polish citizens. I argue that it may lead to resurfacing of the nationalist tension with widespread international repercussions.*

Key words: *dual citizenship, Opole Silesia, Germany, Poland, European Union.*

OPOLE SILESIA, ETHNICITY AND STATEHOOD

This article focuses on a territorial unit which emerged as a distinctive region quite recently. The name of Silesia refers to the historical province that extended from Gör-litz/Zgorzelec in the west, to Katowice (Kattowitz)¹ in the east, along the banks of the Oder River. In the 15th century it became the usual practice to speak about Silesia's western half centered on the city of Breslau (Wrocław) as Lower Silesia, and to dub its eastern part governed from Oppeln (Opole) as Upper Silesia.

The first Polish ruler Mieszko I seized the territory of would-be Silesia from Bohemia. In 1138 the Polish realm disintegrated. With time the province of Silesia became fragmented too. From the 12th century the local Silesian rulers had attracted settlers from the relatively overpopulated areas of the Holy Roman Empire. The Silesian duchies became property of the Czech Crown in the 14th century, which also entailed inclusion of them within the empire's borders.

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¹ I use these forms of place-names that were used in the period I refer to. In parentheses I give the current forms of these place-names or the former ones should I speak about the present day.

The influx of the Germanic-speaking migrants left most Lower Silesia Germanicphone with Upper Silesia predominantly Slavicphone. The migration was largely over in the 15th century and the resultant ethnic make-up of Silesia was reinforced by the use of official languages – chancery German in Lower Silesia and chancery Bohemian (Czech) in Upper Silesia (obviously, apart from the written lingua franca of Latin). The religious strife of the 16th and 17th centuries made this ethno-linguistic cleavage firmer with the west of Lower Silesia overwhelmingly Protestant, eastern Lower Silesia of mixed Protestant-Catholic character, while Upper Silesia remained Catholic with mere 9 per cent of Protestants in its population.

In 1526 the Habsburgs took over the Czech throne. Despite repeated foreign interventions staged by Protestant powers, Vienna tended to suppress Protestantism and in favor of Catholicism in Silesia. The situation changed only in 1740-42 when Prussia annexed seven-eighths of Silesia leaving Vienna with the southernmost strip of Upper Silesia since then known as Austrian Silesia.

In Prussian Silesia standard German replaced chancery Bohemian as the official language. Modernization decisively took off after the period of the Napoleonic Wars. With the rise of the Upper Silesian industrial basin (in continental Europe second only to the Ruhr) the influx of engineers and civil servants from Prussia's hinterland commenced. Popular education and conscription integrated the Upper Silesian population with the German-speaking mainstream of Prussian society. But the dominant Slavicphone-cum-Catholic character of this land persisted with the qualification that Upper Silesia's westernmost reaches were increasingly German-speaking, while its center and the east predominantly Slavicphone apart from the urban areas (cf. Bahlcke, 1996).

In 1871, with the whole of Prussia, Upper Silesia found itself in the newly-established German nation-state. In contrast to the Western European and American tradition of civic/political nationalism that equaled citizenship with nationality, Berlin adopted the ethnic variant of nationalism as the political basis of the German nation-state. In this view citizenship (*Staatsangehörigkeit*, *Staatsbürgerschaft*) was not synonymous with ethnically construed nationality (*Nationalität*, *Volkszugehörigkeit*). But all the inhabitants of the German Empire obtained German citizenship notwithstanding their German or non-German nationality/ethnicity.

The 1880s attempts at preventing incoming Poles and Jews from acquiring German citizenship indicated its national dimension. On the other hand, the German citizen's residence abroad for a period longer than ten years entailed the loss of German citizenship, which was more congruent with the principles of civic nationalism. This mixed ethno-civic kind of citizenship served well imperial Germany's citizenry who was a cross between a territorial community and a community of decent. Clearly, not all German citizens were Germans from the ethnic point of view and the German Empire did not embrace all the Germans/German-speakers either (Brubaker, 1992: 51-52).

The co-existence of the *jus sanguinis* and *jus soli* elements in citizenship law is typical of most modern states (Hagedorn, 1998: 32). Germany's 1913 *Reichs- und Staatsangehörigkeitgesetz* (citizenship act), however, decisively tilted this balance in favor of the community of decent. The ethnicization of German citizenship meant that ethnically non-German immigrants could not obtain German citizenship. What is more, this allowed Germans residing abroad (*Auslandsdeutsche*) to retain their citizenship indefinitely and transmit it to their descendents (Brubaker, 1992: 114).

After World War I the Wilsonian principle of national self-determination overhauled Central Europe into a multitude of nation-states grounded in ethnic nationalism. Apart from the disappearance of Austria-Hungary, the event most ominous for Germany was the establishment of Poland and Czechoslovakia. Both of the new nation-states comprised large German minorities, while the former obtained extensive territories that previously had belonged to the German Empire.

Since 1815 Prussian Upper Silesia was coterminous with the administrative unit of the Oppeln (Opole) Regency contained within the Province of Silesia that formed part of the Land of Prussia. In 1919 on the basis of the Versailles Treaty Berlin handed small fragments of Upper Silesia over to Poland and Czechoslovakia. And after the 1921 plebiscite the Allies split the region giving most of the industrial basin (about one-third of Upper Silesia) to Warsaw in 1922. Two years earlier the eastern half of Austrian Silesia had been divided between Poland and Czechoslovakia. From these fragments of Upper and Austrian Silesia Warsaw ironed out its only autonomous voivodeship (province) that went by the confusing name of Silesian Voivodeship. Germany's truncated Oppeln (Opole) Regency was elevated to the rank of the Province of Upper Silesia (thus, the Province of Silesia disappeared, and its non-Upper Silesian section became the Province of Lower Silesia). In Poland it became popular to refer to Germany's Province of Upper Silesia as 'Opole Silesia' so as to avoid employing the widespread colloquial coinage 'German Upper Silesia'. The Polish adjective *opolski* derived from the name of the city of Oppeln (Opole) was very close to the adjective *polski*—Polish. At least in this manner Warsaw could further its claim to all of Upper Silesia (Kamusella, 2001).

The construction of the Polish nation-state's citizenship reflected the pre-1913 German model. The ideological basis of this new state was ethnic nationalism, but the practice was quite civic. Poland's territory was culled out from the fragments gained from the German Empire, Russia and Austria-Hungary. This reality was reflected in the 1920 citizenship act together with the 1924 Polish-German Vienna Convention. Irrespectively of nationality (ethnicity), these documents conferred Polish citizenship on all the persons with the domicile in the Polish territory. Additionally, the 1922 German-Polish Geneva Convention regulated the consequences of the division of Upper Silesia, among others, also the issue of citizenship. German citizens in Poland's section of Upper Silesia had to choose between acquiring Polish citizenship or retaining their German one. The same stipulation extended to the German part of this region. The deadline was 1926 and entailed that those with foreign citizenship had to leave their domiciles for the nation-state they had selected through their choice of citizenship (Chałupczak, 1998: 48-49). By 1939 190 thousand persons left the Silesian Voivodeship for Germany and 100 thousand the Province of Upper Silesia for Poland (Kamusella, 1999: 56).

Ethnic nationalism ruled supreme in the latter half of the 1930s. The 1935 *Reichsbürgergesetz* (citizenship act) – better known as one of the Nuremberg laws – created the institutions of full citizenship (*Reichbürgerschaft*) and of mere state-membership (*Staatsangehörigkeit*). Only full citizens enjoyed political rights and together formed the *Volks-gemeinschaft* (ethnically pure German nation). In practice the status of *Staatsangehörigkeit* was used only to exclude Jews and Roma from the *Volks-gemeinschaft*. The German-Polish Geneva Convention precluded the application of this measure in Germany's part of Upper Silesia until its expiration in 1937 (Brubaker, 1992: 167).

In Poland the efforts to ethnically homogenize the population (sometimes violent as in eastern Galicia) were translated into legal solutions not unlike in Germany. The 1938 act on deprivation of citizenship applied to persons who '[had] lost the link with the Polish statehood'. Warsaw used this notoriously imprecise act to strip of Polish citizenship persons who had resided abroad for years. They usually belonged to national minorities, and most of the persons who were deprived of Polish citizenship in this manner were Jews (Chalupeczak, 1998: 49).

During World War II the territory of Poland's Silesian Voivodeship together with the adjacent counties (*powiats*) of the Kielce and Cracow Voivodeships was included in the wartime Province of Upper Silesia that consisted of the Oppeln (Opole) and Kattowitz (Katowice) Regencies. The further measures aimed at constructing the *Volksgemeinschaft* applied mainly to the erstwhile Polish section of Upper Silesia. The national socialist authorities expelled from Upper Silesia 81 thousand Poles who had mainly arrived after 1922. Next, in vacated flats and houses, Berlin settled 37 thousand ethnic Germans from the territories allocated to the Soviet Union on the basis of the Ribbentrop-Molotov Pact. The remaining population of the interwar Silesian Voivodeship was inscribed onto the *Deutsche Volksliste* (DVL, German National List). The DVL's groups I and II contained 300 thousand persons of indubitable Germanness and the groups III and IV one million potential Germans. Berlin extended full citizenship only to the members of the groups I and II. The rest were mere state-members. But as *Staatsangehörige* they could not be drafted into the *Wehrmacht*. With the opening of the eastern front in 1941 the need for soldiers became so acute that the group III (comprising about 940 thousand persons) were granted with *Reichsbürgerschaft* (Boda-Kreżel, 1978: 13-20).

In 1945, Moscow, in return of the *Kresy* (Poland's eastern territories incorporated into the Soviet Union), granted the postwar Poland with the *deutsche Ostgebiete* (German eastern territories) apart from the northern half of East Prussia incorporated into the Soviet Union. Warsaw, in close emulation of the national socialist model, embarked on the project of building the ethnically pure Polish nation. This entailed 'transfer' (this is, expulsion) of the several millions of inhabitants recognized to be Germans. The 1946 act on the Polish State's citizenship for persons of Polish nationality with the domicile in the Recovered Territories (this is, *deutsche Ostgebiete*) legalized this process that had started in 1945. Polish citizenship was to be conferred only on persons who had lived on these territories prior to 1945, proved their Polish nationality in front of the verification commission as well as declared their loyalty to the Polish nation and state (Chalupeczak, 1998: 49).

The administrative shape of the wartime Province of Upper Silesia became the framework on the basis of which the postwar Silesian Voivodeship was founded. From the voivodeship's eastern half corresponding to the interwar Province of Upper Silesia about half a million Germans fled, were evacuated, expelled or deported to the Soviet Union in the years 1944-50. The rest, that is, 851 thousand German citizens were verified as Poles and granted with Polish citizenship. In the voivodeship's eastern section coterminous with the prewar autonomous Silesian Voivodeship, the members of the DVL group I and 30 per cent members of the DVL group II (this is, 154 thousand) were expelled. The members of the DVL groups III and IV together with 70 per cent members of the DVL group II (this is, 1.145 million) were rehabilitated as Poles and re-granted with Polish citizenship (Misztal, 1990: 306; Boda-Kreżel, 1978: 130-131)

This process of verification and rehabilitation together with granting and re-granting Polish citizenship was extremely traumatic for those concerned. The (re-)acquisition of Polish citizenship was on the temporary basis only. The administration could revoke it any time. In the official language these nominal Poles of Upper Silesia were termed as 'autochthons', that is, 'potential Poles' who had to be made into 'real Poles' through 're-Polonization' (mostly Polonization). This barred them from achieving any administrative, managerial or political career in communist Poland and condemned to the status of second-class citizens (cf. Linek, 1997).

The 1951 citizenship act tentatively rounded up the postwar period of insecurity and arbitrary decisions. The temporary Polish citizenship was recognized as permanent. Moreover, persons of non-Polish nationality resident in Poland at least from 1945 could obtain Polish citizenship. On the other hand, this act deprived of Polish citizenship those persons who had resided abroad since 1939, hence, mostly the Polish citizens of the *Kresy* who had been left in the Soviet Union by the change of the postwar Poland's borders. Another citizenship act of 1962 allowed for forced turning into Polish citizens of persons who had not obtained this citizenship so far, mostly ethnic Germans (Chałupczak, 1998: 49; Sakson, 1998: 203-204).

This slight de-ethnicization of Polish citizenship and fitting it within Poland's postwar borders took place after the division of the postwar Silesian Voivodeship into the Opole (Oppeln) and Katowice (Kattowitz) Voivodeships in 1950. The former corresponded to Germany's interwar Province of Upper Silesia minus the highly urbanized industrial wedge extending from Gliwice (Gleiwitz) to Bytom (Beuthen) that was included in the Katowice (Kattowitz) Voivodeship. This voivodeship was largely coterminous with the Kattowitz (Katowice) Regency of Germany's wartime Province of Upper Silesia (Kamusella, 2001). The autochthons or persons who possessed German citizenship prior to 1945 accounted for 54.3 per cent of the Opole (Oppeln) Voivodeship's population (Bahlcke, 1996: 188). To this day they add up to one-third of the voivodeship's inhabitants. They and even ethnic Poles tend to refer to their voivodeship as 'Opole Silesia' (cf. Berlińska, 1999).

German law had to react to these sweeping postwar changes in the political and legal shape of Europe. West Germany became the only successor of the German state because East Germany dissociated itself from this legacy tarnished by national socialism. In accordance with the Allies' decision, German territory was construed as that of Germany on December 31, 1937. Thus, from 1949 to 1990 it coincided with the two postwar German states and the *deutsche Ostgebiete* under the temporary Polish and Soviet administration (Blumenwitz, 1989).

This decoupling of the *de facto* West Germany's territory from the *de jure* pretences translated into the retaining of the strongly ethnicized concept of German citizenship less the national socialist exclusivist developments of 1933-1945. If there had to be West and East Germany along the *deutsche Ostgebiete* controlled by neither of these two states, at least citizenship remained unquestionably German. This citizenship functioned as the very last link between the *de jure* German territory of 1937 and the Cold War reality of divided Germany and Europe. There was never such a thing as 'West German citizenship', and the concept of East German citizenship developed only in the 1970s. In consequence, Bonn viewed almost all East German residents as German citizens (Brubaker, 1992: 169; Fulbrook, 1996: 96).

West Germany's 1949 *Grundgesetz* (Basic Law) mostly retained the concept of ethnically construed citizenship as introduced by the 1913 citizenship act. The *Grundgesetz's* Article 116 bestowed automatic rights of citizenship and residence in West Germany on those who were, or were the spouses or descendants of, citizens of Germany in the boundaries of 1937. In order to repeal the national socialist amendments, Article 116 extended these rights to those persons who had been deprived of German citizenship between 1933 and 1945, and to their descendants. Because this article did not distinguish between *Reichsbürgerschaft* and *Staatsangehörigkeit*, recombining both these statuses in the again unitary concept of *Staatsangehörigkeit*, mere member-states of the national socialist times as well as they descendants were entitled to German citizenship too.

The 1953 *Bundesvertriebenengesetz* (Act on the [ethnic] German Expellees) created the status of *Aussiedler* (resettler) that granted certain social and economic privileges to ethnic German expellees and refugees eligible for (re-)acquisition of German citizenship in light of Article 116. This act extended the status of *Aussiedler* as well as citizenship entitlements of the *Grundgesetz* not only to ethnic Germans or German citizens arriving from East Germany or the *deutsche Ostgebiete* but also from the interwar Free City of Danzig (Gdańsk), Czechoslovakia, Estonia, Latvia, Lithuania or other republics of the Soviet Union, Hungary, Romania, Bulgaria, Yugoslavia, Albania and China as well as from other states when the applicant explains why s/he resided there after 1945 (Bartz, 1995: 61).

THE GAME OF NUMBERS AND THE END OF COMMUNISM

After the rounding up of the verification and rehabilitation processes as well as the expulsions (allowed by the Potsdam Agreements) in 1950, Warsaw maintained that no Germans had been left in Poland. It was a spurious claim in view of the 1951 and 1962 citizenship acts, the provisions of which were used mainly to confer Polish citizenship on ethnic Germans resident in the postwar Poland. According to secret estimates available only to the inner circle of the Polish Communist Party (PZPR), in 1952 mere 100 thousand Germans lived in Poland, and mere 681 in the Opole (Oppeln) Voivodeship (Osękowski, 1994: 128). After 1946 no Polish census has recorded nationality/ethnicity of inhabitants but in 1952 all the population were to be distributed with internal passports (*dowód osobisty*). Prior to that, the applicants were to fill in the questionnaire where the rubric 'nationality' was included. In the Opole (Oppeln) Voivodeship, 67 thousand persons indicated their nationality as German and 12 thousand made the same choice in the Katowice (Kattowitz) Voivodeship (Osękowski, 1994: 119).

Even more surprisingly, in the period 1950-1989 Warsaw allowed for the emigration of 1,238,000 persons to West Germany (Dallinger, 1997: 23) including 558,000 from Upper Silesia alone (Bahlcke, 1996: 183). However, the official propaganda dubbed this emigration as 'economic' and maintained the myth of non-existence of Germans in Poland until the fall of Communism. For instance, the Polish scholars estimated the number of remaining Germans as 3.5 thousand (Byczkowski, 1976). The Soviet sources tuned in with the estimates of 'several thousands' (Bruk, 1986).

Completely different picture of the size of Poland's German minority emerged from West German publications. Reichling (1986: 62-65) estimated the number of German citizens and their descendants living in the *deutsche Ostgebiete* under the temporary Pol-

ish administration in 1982 at 1,130,000. Should the Upper Silesian population who acquired German citizenship via the DVL be included, the number would be beefed up to 1.5 million (Voegelin, 1977).

This wild discrepancy between Polish and German numbers is easily explicated. Warsaw considered German citizens (and their descendants) who had been verified/rehabilitated as Poles and (re-)acquired Polish citizenship as 'autochthons', this is, ethnic Poles. Their steady emigration to West Germany after 1950, periodically agreed upon and organized by Bonn and Warsaw on various basis, the Polish authorities dubbed as 'economic' or 'opportunistic'. The West German administration, however, saw these immigrants in the light of the *Grundgesetz* as German citizens, thus, ethnic Germans. Both sides projected their views on an extremely variegated population that originated in the erstwhile Slavic-Germanic ethnic borderland. Those concerned were mono-, bi- and multilingual in a local Slavic, local Germanic dialect, local Slavic-Germanic creole, standard German or standard Polish. This linguistic competence, however, did not necessarily coincide with ethnic identification that could be with the German or the Polish nation as well as with the ethnic groups of the Szlonzoks, Kashubs, Mazurs or Slovincians. In some cases persons could identify with two or more of these groups at once (cf. Kamusella, 1998; Kamusella, 1999a).

In the wake of the fall of communism, 250,000 ethnic Germans left Poland for West Germany in 1989 and 134,000 next year (Rogall, 1991: 32). In 1991 this emigration had dropped to 40 thousand, next to 18 thousand in 1992, 5 thousand in 1993, 2 thousand in 1994, 1.5 thousand in 1995 (Dallinger, 1997: 22), before it leveled out at below one thousand in the second half of the 1990s. The overwhelming majority of these emigrants stemmed from Upper Silesia (Anon., 1996; Anon., 1999).

The 2 plus four negotiations (1989-1990) ended the Cold War division of Europe and opened the way for the reunification of Germany on 3 October 1990. On 14 November, in the German-Polish treaty, Bonn recognized Poland's *de facto* western border as *de jure* in the light of international law. Thus, the German territory was made smaller so that it coincides with the reunified Germany, and the deutsche Ostgebiete under the temporary Polish and Soviet administration became *de facto* and *de jure* parts of the territories of Poland and the Soviet Union.

In the 1990 Polish-German treaty on good neighborliness and friendly cooperation, Warsaw recognized the existence of Poland's German minority and granted it with a set of minority rights. Illegal German associations established in the 1980s became legalized and new ones came into being. At that time the Polish Statistical Office (GUS) estimated the number of Germans living in Poland at 260 thousand, the Ministry of National Education (MEN, responsible for education in national minority languages) at 308-350 thousand, the Sejm's (Parliamentarian) Commission of National and Ethnic Minorities (KMNiE) at 350-450 thousand, while the German associations at 0.5-1 million (Żołędowski, 1997: 33). These estimates filled in the middle ground between Poland's conservative stance claiming non-existence of Germans in the postwar Poland and the West German conservative view of 1.5 million Germans living in Poland.

AFTER THE COLD WAR

With the break-up of the Soviet bloc and the Soviet Union, recently reunified Germany got swamped with hundreds of thousands of *Aussiedlers* from Romania and the post-Soviet republics in addition to those from Poland. All in all, this emigration has always been a positive phenomenon that helped to stave off the rapid aging of the West German society. But the swell came at a bad moment when Bonn struggled with the economic, social and political costs of the reunification. Moreover, foreigners with permanent residence permits soared to 7.2 million, this is, nearly 9 per cent of Germany's population (Dallinger, 1997: 40). Despite Chancellor Helmut Kohl's repeated statement that Germany was not an immigrant country (in Walicki, 2000), there was an urgent need to enfranchise this large group excluded from the enjoyment of German citizenship by the *jus sanguinis* tradition.

The first step toward this direction was the *Kriegsfolgenbereinigungsgesets* (War Consequences Consolidation Act) passed in 1992. As of 1 January 1993 the status of *Aussiedler* was replaced with that of *Spätaussiedler* (late resettler). What is more, only those born before this date can apply for this new status, thus, the citizenship entitlements provided by Article 116 were made null and void for all those ethnic Germans born after this date. Obviously, they can inherit German citizenship from their parents should the latter successfully (re-)acquire it (Wolf, 1996: 5).

The status of *Spätaussiedler* provides one with less economic and social benefits than that of *Aussiedler*. Additionally, the prospective applicant has to prove that s/he was persecuted due to his/her German nationality (unless his/her domicile was in the former Soviet Union), and to prove his/her German nationality to the satisfaction of the authority that assesses his/her application (Bartz, 1995: 62-64).

However, apart from barring ethnic Germans from arriving to Germany where they overburdened the already strained social services system, the *Kriegsfolgenbereinigungsgesets* does not prohibit issuing German citizenship documents and passports to ethnic Germans with domicile in Poland, Czechoslovakia or Romania who have applied for those without moving to Germany and seeking to obtain status of *Spätaussiedler*. This manner of acquiring German citizenship in accordance with Article 116 is open to all those ethnic Germans born prior to 1993. Carrying out the constitutional obligation of extending German citizenship to those eligible without having to shoulder the costs of their resettlement to Germany was not appealing only to Bonn. The Polish authorities were also interested in stemming any further emigration of Germans from Poland and, especially, from Opole Silesia. Any ongoing depletion of this region of the young and those in the productive age would lead to the economic collapse of this region as well as to deepening the already seriously unbalanced character of its demographic structure (Rauziński, 1996, p. 61).

Consequently, without any ado and with Warsaw's tacit agreement, in 1993, the German embassies and consulates began to confer German citizenship on Germans living in Poland and also to provide them with German passports. In the case of Opole Silesia the citizenship documents are processed at the General Consulate in Wrocław (Breslau), and the Opole (Oppeln) Vice-Consulate issues German passports to the citizenship holders. This spared the applicants the need to go to Germany where had previously only been possible to apply for and obtain these documents. But all this trekking had convinced many an applicant not to return to Poland. This was to be avoided in this new situation after the fall of communism

and the break-up of the Soviet Union. According to the 1995 data, in the years 1991-94 about 170 thousand Poland's Germans received German citizenship, and 30 thousand applications were awaiting processing at that time (Kamusella, 1996a, p. 17). Hence, it may be safely inferred that the current number of these Germans who have received German citizenship and reside in Poland must be 200 thousand or more.

Poland's Germans concentrate in the eastern half of the Opole (Oppeln) Voivodeship and in the adjacent rural *gminas* (communes) of the Silesian (Katowice [Kattowitz]) Voivodeship². The German associations' membership has remained unchanged throughout the 1990s at 300 thousand. 280 thousand of them stem from the region delineated above (Kurcz, 1995: p. 43). In one-third the 1.1 million-strong population of Opole Silesia is composed from former German citizens verified (or, more rarely, rehabilitated) as Poles. Notwithstanding their variegated ethnic/national identification at the close of World War II, the persecutions and prejudice of forced Polonization and of the status of suspect second-class citizens they suffered in the communist Poland, convinced them to embrace Germanhood. Even if they were not allowed to and, consequently, do not speak any German nowadays (Berlińska, 1999, pp. 107-186, 296-336; Linek, 2000, pp. 337-386).

In the light of these facts, I estimate the size of Poland's German minority at 400-500 thousand. Out of this number some 350 thousand live in Opole Silesia and 120 thousand in the Silesian Voivodeship with the rest strewn across Germany's former Provinces of East and West Prussia, and Pomerania, today northern Poland. In the west of the Opole (Oppeln) Voivodeship they actually form a demographic majority that is the largest compact area of residence of Germans outside the German-speaking states. As noted above, the overwhelming majority of Poland's ethnic Germans who secured German citizenship and passports for themselves also live in this area. The *Kriegsfolgenbereinigungsgesetz* actually scraps the legal category of ethnic German living abroad who is eligible for German citizenship. Language is the very basis of Central European ethnic nationalisms (Kamusella, 2001a), hence, the lack of command of German among Poland's Germans aged less than 65 elevates German citizenship into the primary indication of Germanness in this group. I infer (provided the current geopolitical situation would not alter dramatically) that in several decades the size of Poland's German minority will stabilize at 200 thousand and will correspond to the group who, today, are holders of German citizenship and passports.

The situation may get more complicated though, in result of the ruling issued by the voivodeship court at Olsztyn (Allstein) in north-eastern Poland. Namely, a case was heard of a German *Aussiedler* who wished to regain his property he had to abandon upon his emigration from Poland in the 1960s. The court found his wish invalid but decided that, technically speaking, he was still a Polish citizen. In a nutshell, Germans with Polish citizenship who were leaving for West Germany had to renounce this citizenship. But after the introduction of the 1962 citizenship act, this routine renouncement was found defective and, as such, invalid. This means that about 300 thousand Polish Germans who left for West Germany in 1962-1979 can reclaim their Polish citizenship. On top of that, 840

² Due to the 1998 self-government-cum-administrative reform as of 1999 the slightly enlarged Katowice (Kattowitz) Voivodeship is known as the Silesian Voivodeship. Obviously, it corresponds, but only in a limited manner, to Poland's interwar autonomous Silesian Voivodeship and 1945-1950 postwar Silesian Voivodeship.

thousand *Aussiedlers* and *Spätaussiedlers* who have arrived from Poland since 1980 did not renounce their Polish citizenship (Anon., 2000; Dallinger, 1997, p. 23).

Travel passports and internal passports were taken away from those who left for Germany in 1962-1979. In their case in order to reclaim Polish citizenship one would have to obtain the internal passport granted to one who has a domicile in Poland. The next step would be applying for the travel passport on this basis. The procedure being quite onerous hardly anybody would be ready to follow it. The 1980-1989 emigrants with old communist travel passports can claim new ones at Polish consulates. The difficult part though would be going back to Poland and applying for internal passport on the basis of possessing the travel passport. However, many of this group still have their internal passports. From the legal standpoint, this makes them indistinguishable from other Polish citizens. And, indeed, some 25-35 thousand of them returned to Poland in the 1990s. (Anon., 2000; Cywiński, 2000).

DUAL CITIZENSHIP IN OPOLE SILESIA

Popularly the construct of dual/multiple citizenship is considered to be dangerous because it allows one to freely move between separate territories of different nation-states (Chećko, 2001). This disturbs the homogeneity of these states' nations if they are ethnically defined. It is then readily assumed that such an individual is only interested in using her citizenships for the sake of avoiding civic responsibilities (symbolized by the necessity to pay the income tax or to do the compulsory military service) and in order to enjoy various rights and privileges earmarked for its citizens only by a given state.

This view reflects the fact that, in general, the public have accepted this interpretation of the institution of citizenship from the state's vantage. But, since the beginning of the 1990s this perspective has been gradually shunned in all of Europe. Citizenship was recognized as one of the instruments to ensure that freedom and interests of Man are not unduly infringed by the state (cf. Anon., 1997; Anon., 1997a). Should one accept the logic of human rights as paramount, it is not Man and citizenship that serve the state but the other way round. Then citizenship is one of the institutions through which the state's services are channeled in the interest of Man. Thus, it seems that the currently accepted goal, which legitimates existence of the state, is to be of service to Man together with respect for his/her good and freedom (cf. Watzal, 1996, pp. 219-457). Certainly, the state should ensure fulfillment of these values for the individual inasmuch as this does not infringe fulfillment of the values in respect of other people. Perhaps this novel perception of the state as subservient to Man will be turned into the basis of ensuring lasting peace in Europe as reflected in the appropriate integration of this continent within the framework of the EU so as to achieve and maintain this goal (cf. Kinsky, 1995).

But coming to the subject of the traditional accusations put forward in regard of people with dual/multiple citizenship, it does not seem true that a considerable group of Opole Silesia's Germans enjoying dual citizenship uses this as an opportunity not to pay taxes. When they work in Poland they pay taxes there, and in Germany when they are employed in the country. This is stipulated by the German-Polish agreement on avoiding dual taxation. On the other hand, there are not any difficulties in applying Polish law to Germans with dual citizenship. Namely, in the light of this law, a Polish citizen cannot ef-

fectively acquire foreign citizenship without having renounced his Polish citizenship first. So as far as the Polish administration and courts are concerned, Opole Silesia's Germans with dual citizenship are Polish citizens only. On the other hand, the *Grundgesetz's* Article 116 provides that those Germans of Opole Silesia who as of 8th May 1945 possessed German citizenship (together with their descendants) did not effectively lose it through having acquired Polish citizenship. From the viewpoint of German law, this acquisition was ineffective. This interpretation allows the German authorities to treat them as German citizens when they reside in Germany.

So, Opole Silesia's Germans are treated as German citizens in Germany and as Polish ones in Poland unless they cross the border into Germany bearing the Polish passport or use the German passport while entering Poland. But it is a rare event because in the overwhelming majority of cases hardly any Opole Silesian German would like to make his/her life difficult through using only his/her German passport in Poland and her Polish one in Germany. This would condemn her to the permanent status of a foreigner in both states (Anon., 2000).

In Poland, till 1999, the main problem connected to this dual Polish-German citizenship was the question of military service. If one is a citizen of Poland it entails that should he join the German army it would amount to an act of treason from the legal and political point of view. But relatively few young Germans from Opole Silesia did their military service in the *Bundeswehr* and returned to Poland where, on this basis, they wished to be released from fulfilling this duty in the Polish army. Usually, such cases were not referred to court, as they ought to be in agreement with the letter of law (Anon., 1998). In Germany the situation is a bit different. German citizens without any permanent address in Germany (as it is in the case of Opole Silesia's Germans) are not drafted to the army and also are not eligible for participating in any elections in Germany.

As a matter of fact, dodging the draft for compulsory military service by German conscripts from Opole Silesia especially through leaving for Germany does not differ too much from the Polish norm. Most Polish conscripts wish to avoid joining the army afraid of being 'roughed up' by older soldiers and repelled by the pittance of military pay when one has to work hard and earn well if he wishes to purchase a flat and to establish a family. Hence, numerous conscripts, especially from the middle class, avoid doing their compulsory military service.

France being the first state that had introduced this duty two centuries earlier as one of the instruments of nation- and nation-state-building, scrapped compulsory military service in 1997. This trend spreads to other states in Western Europe, and is bound to arrive at Poland too. Hopefully, in the wake of stable economic growth, Poland will soon be able to afford a professional army, this is, a more democratic and efficient one in 10 years. Moreover, in 1999, along the Czech Republic and Hungary, Poland became a member of NATO. Since then the fact of joining the *Bundeswehr* or other allied armies by Germans from Opole Silesia, has become less problematic than it was prior to this date.

On top of that, the negative attitude to dual citizenship in Poland does not extend to persons whose second citizenship is other than German. Tens of thousands of Polish citizens who live at the feet of the Carpathians and south of Cracow and Rzeszów, do enjoy US citizenship. It is a valued, respected and sought for possession in the postcommunist Poland. US citizenship does not diminish legitimacy of the current Marshal (Self-Governmental Regional President) of the Opole (Oppeln) Voivodeship as UK citizenship does

not that of Poland's current Deputy Minister of Defence (Chećko, 2001). The dislike of German citizenship as a second one is a legacy of the anti-German feeling that, on Moscow's behest, Warsaw actively encouraged from 1945 to 1989. Now this feeling subsides, and several German MPs and one Senator who have sat in the Polish Parliament can more openly admit that they have 'second' German passports too.

THE EUROPEAN UNION AND DUAL CITIZENSHIP

Neither Polish mainstream politicians nor their German counterparts have tried to use the ambiguities linked to the dual citizenship of Germans in Opole Silesia for political ends. Why? Apparently, since the beginning of the 1990s it has dawned on the Polish politicians that there is a considerable Polish diaspora in the West as well as in the formerly Polish eastern territories (*Kresy*), today in Lithuania, Ukraine and Belarus. Communist Poland stripped the former of their Polish citizenship and the latter were deprived of it on the basis of Polish-Soviet agreements. Since communism's collapse, ethnic Poles living in the West have started to regain their Polish citizenship through acquiring valid Polish passports readily supplied to interested parties by Polish embassies and consulates. It was decided that the act of depriving them of their citizenship was illegal and not binding unless they renounced this citizenship and this renouncement was acknowledged by the Polish authorities. Obviously, when (re-)acquiring Polish citizenship these Poles and their descendants almost never give up citizenship of the states of their abode or of some third states, and the Polish consular corps do not demand it of them though Polish law stipulates this (Anon., 1991). Actually, this a bit voluntary approach to conferring Polish citizenship on ethnic Poles does emulate the legal effects of the *Grungesetz's* Article 116. This approach does not extend yet to ethnic Poles and former Polish citizens in the *Kresy* and in other post-Soviet republics (especially Kazakstan) though the discussion on applying such provisions to them has continued since the beginning of the 1990s.

German politicians also approve the existence of this increasing group of German citizens with dual citizenship (it is not demanded of *Aussiedlers* and *Spätaussiedlers* to renounce their non-German citizenship). First, it has allowed retaining Germans in Opole Silesia while hundreds of thousands of ethnic Germans have arrived to Germany from the erstwhile Soviet Union. Second, in this manner, the German public opinion had been accustomed to the necessity of gradual overhauling of the ethnic concept of German citizenship into a more civic one. This process commenced in 1999. Albeit this change does not allow dual/multiple citizenship, it partially de-ethnicized the *jus sanguinis* orthodoxy of German citizenship (Schayan, 2000).

The first Polish postcommunist constitution of 1997 gives the new definition of the Polish nation in the Preamble. This provision equals this nation with *all* the citizens of the Republic of Poland. It is a decisive step toward civic nationalism and grounding Polish citizenship in the *jus soli* tradition. Unfortunately, citizenship law did not change accordingly, though now, from the constitutional point of view, citizenship functions as the instrument of participation in the Polish state and also in the Polish nation. I hope that with time this new civic approach will replace the ethnically defined Polish nationality that, in the past, excluded ethnically non-Polish persons (even if they possessed Polish citizenship) from the Polish nation and from full participation in the Polish state. This former

state of affairs also meant forced assimilation for such un-Polish groups who were made to renounce their languages and cultures as it was the case of Opole Silesia's Germans in the period 1945-89.

Basing participation in the Polish state and nation on the institution of citizenship prepares Poland and its inhabitants to the changing shape of today's world, where citizenship is gradually recognized as one of basic human rights and the formal tie binding one with the state and co-citizens irrespectively of one's ethnicity (Anon., 1997). It seems that, as after the period of religious discord, religion became part of Man's private sphere so as to prevent further recurrence of religious strife, nowadays, in the wake of the ethnic wars in the 19th and 20th centuries, ethnicity/culture also follows into the footsteps of religion. Without making ethnicity/culture one's private choice, in future, it may be difficult or even impossible to prevent shedding of blood and destruction in the name of this or that language, ethnic nation or enthnational history (cf. Ross, 1995).

What is more, these new definitions of Polish citizenship and of the Polish nation prepare Poland for fuller membership in the EU. In accordance with the Maastricht Treaty (1992) the European Union is a tripartite structure consisting from the levels of: the Union, the member states, and the regions. Eventually, all the three levels may equally share sovereignty among them. This new instrument of checks and balances would then reflect Montesquie's tripartite division of power without which there would not have been modern democracy. Furthermore, it is believed that such a three-tier organization of the EU not only will improve functioning of its economy and politics in the globalized world, but will also guarantee each EU citizen full participation in the life of the Union, as well as in the life of his/her nation-state and region (cf. Kinsky, 1995a).

And it is citizenship that makes possible for one to participate in the EU and its different levels. *De facto*, almost every inhabitant of the EU enjoys dual citizenship. Through the citizenship of his nation-state s/he acquires EU citizenship. It entitles one to consular help of every member state without the EU, and functions as an ersatz of 'regional citizenship' allowing one to take part in local and regional elections in the place of one's permanent abode outside one's own nation-state (Lehning, 1997).

This is where the question of the dual citizenship of Opole Silesia's Germans may become thorny. Polish and German politicians chose to overlook this phenomenon hoping that it would be solved by itself after Poland's accession to the EU.

The EU is a non-national polity, membership in which entails meeting some accession criteria and securing appropriate political will of citizenry. Ethnicity does not form part of this equation³. But, paradoxically, due to the fact that German citizenship still remains steeped mainly in the *jus sanguinis* tradition, Opole Silesia houses the largest compact group of Germans living outside Germany as well as the largest compact group of EU citizens residing without the Union.

This discrepancy should disappear when Poland accedes the EU. But it is surprising that so far no discussion has been devoted to the possible negative influence of the Polish

³ This statement is a little faulty because the vague and undefined requirement of 'being European' before a state is allowed to commence accession negotiations with the EU introduces an element of ethnicity. This argument was used to deny reviewing the membership applications submitted by Turkey and Morocco. Since then, however, in 1999 Turkey was granted with the candidate status. So the discussion continues should culture/ethnicity play a role in the accession of future members to the EU.

membership in the EU on Opole Silesia's social cohesion if Warsaw continues to press for various derogation periods on implementation of some Community law provisions. The more such derogations will be successfully negotiated the more probable it is that Brussels will demand as the price to pay for these concessions, namely, a long derogation period on the freedom of movement of people *vis-à-vis* Polish citizens.

Should this scenario unfold in this manner, it could bar Polish citizens from the Union's common employment market for a considerable time. In the case of Opole Silesia it would mean the re-introduction of citizenship of two classes. Such a situation was obtained in the years 1945-89 when Polish citizenship was very dependent on Polish ethnic nationality. The authorities treated non-Polish or not-fully-entirely Polish citizens worse than recognized as ethnically 'indubitable, true Poles' (cf. Linek, 1997).

If Poland became a EU member today, and the derogation period on free movement of people was introduced, about 200 thousand inhabitants of Opole Silesia (this is, one-fifth of the total population) would continue to enjoy EU citizenship acquired *via* German citizenship, while the rest would receive apparently this very same EU citizenship through Polish citizenship. But the differently acquired EU citizenships would not be exactly of the same value. That one mediated by German citizenship would grant its holder with all the rights stipulated by *acquis communautaire*, but the other one gained *via* Polish citizenship would be a bit faulty as it would not allow its holder to use the Common Market freedom of movement barred from him by the derogation period.

In practice, it means who will and who will not be allowed to search for employment throughout the EU. Nowadays, at any given time of the year, 50 to 100 thousand Opole Silesian Germans (usually youth and males of productive age) with German passports work in Germany and elsewhere in the EU. As of 1999 especially the Netherlands, with its low unemployment level, actively seeks to attract prospective employees and potential permanent inhabitants from Opole Silesia. This contributes to lessening the extent of unemployment in the region. In 2001 it coincides with the Polish average of 16 per cent. But in the west of the Opole (Oppeln) Voivodeship with no German minority, it reaches the value of over twenty per cent. The west and the east of Opole Silesia are structurally similar, this is, agricultural with a sprinkling of food processing and other usually small business industry. Unemployment is an unknown phenomenon in the German minority villages. But should they have no recourse to the German/EU employment market through their German citizenship, the unemployment in eastern Opole Silesia would be the same as, today, it is in the region's west. Dual citizenship also contributes to the general development of the rural areas in the east of the Opole (Oppeln) Voivodeship, where the majority of the local Germans reside and spend earnings gained in Germany/the EU. Obviously, this increases a demand for various products and, indirectly, creates more jobs in the services sector (Kamusella, 2000).

Their ethnically Polish neighbors readily accept the fact that these Germans can work in Germany and the EU. The former also have relatives who live in and enjoy citizenship of the US and other Western states. This understandably opens opportunities unavailable to holders of Polish citizenship only.

However, if after Poland's accession into the EU, all Polish citizens will be granted with EU citizenship, ethnically Polish neighbors of Opole Silesia's Germans may be indignant at the latter having the same EU citizenship as the former, the ethnic Poles will not be entitled to the same rights as their German neighbors. It goes against the logic of

the institution of citizenship, as it is popularly understood. The tension might not be so high in Spain or Portugal where the EU citizenship mediated by the states' citizenships did not grant them with such rights as the EU citizenship obtained via French or Dutch citizenship. But the difference was explained by pegging it to the territory of a given state and its success at approximating its law and economy to the standard delineated in *acquis communautaire*.

Such an explication would not make any sense for Opole Silesia as no state border separates its inhabitants. They live together in the same localities, streets and blocks of flats. Nay, they live even closer—commonly marrying across the ethnic line as of the 1980s.

To Polish politicians this issue seems to be of little significance because it concerns only one of the 16 Polish voivodeships, and, for that matter, the smallest one. But if this issue flares up into an acute problem after Poland's accession into the EU, the repercussions will be international and not contained to Opole Silesia, due to the legal and political involvement of Brussels, Berlin and Warsaw. In the course of the 2001 leg of accession negotiations, EU and Polish politicians limited the potential tension that this issue can generate. Although prior to 2001 unnamed sources tended to speak about 20 to 25-year long derogation period on free movement of persons in regard of Polish citizens, nowadays the EU's consensus is on the period of 7 years only. Berlin and Vienna appealed for the maximum extent of this period due to populist fears of indispensable emigration from the East to their states. But EU states with dearth of workforce (such as the Netherlands) may make this period shorter or scrap it altogether in relation to the access of Polish citizens to their employment markets.

But all that does not mean that the black scenario will be avoided. The difference in rights stipulated by EU citizenship of two kinds as granted to Polish and German citizens residing in Opole Silesia may cause:

- doing away with social cohesion of the region, cohesion that was painstakingly built in the second half of the 1990s after five years of bitter ethnic tension in the wake of communism's fall;
- an increase in enmity of Opole Silesia's ethnic Poles toward the EU and their German neighbors;
- resurfacing of the Polish-German nationalist tension that the ongoing reconciliation process between Warsaw and Berlin would like to make into a thing of the past;
- renewed increase in emigration of Opole Silesia's Germans to Germany due to the conflictive situation in their region;
- increase of tension between Germany and Poland because of the renewed national conflict in Opole Silesia;
- discord between Warsaw and Berlin, which may be of negative influence on the process of further European integration and enlargement of NATO.

The implementation of the derogative period on the free movement of persons in regard of Polish citizens after their country has become a member of the EU would bring about various negative effects on international and Union-wide scale. In this light, I hope that this potential for conflict will be diffused during the accession negotiations. It would mean advantages for both negotiating parties because if the potential conflict unfolds after Poland's accession into the EU, the guilt of having caused it and the burden of solving it

Warsaw will not be able to put in Brussels' court or *vice versa*. At that time it will already be a common responsibility of the whole Union.

Last but not least, there is no clarity as to how the situation of *Aussiedlers* and *Spätaussiedlers* with the right to Polish citizenship or actually possessing it will develop in near future. In 1990, in the light of international law, Bonn renounced its *de jure* ownership of the *deutsche Ostgebiete* in Polish control. But the recent successful claims of US and Israeli citizens of Jewish ethnicity against Swiss banks and German industry created a precedence. These banks return this gold to the heirs, and Germany decided to pay indemnity to all the forced workers still alive. The *Bund der Vertriebenen* (BdV, Union of the Expellees) that groups German evacuees, refugees, expellees, *Aussiedlers* and *Spätaussiedlers* from the *deutsche Ostgebiete* and from other areas of German settlement west of the Ribbentrop-Molotov line, canvasses for indemnity for the property they had to leave in the East or for the return of it. Budapest already voted for distributing of \$300 to Hungarian Germans who had to leave this state in 1944-1945. Out of the original 300 thousand Hungarian Germans some 70 thousands are still alive. But in the case of Poland and the Czech Republic it would mean the necessity to indemnify millions of Germans. Should this scenario materialize what would deter millions of Poles to demand indemnification for property they had to leave in the *Kresy*?

In 1944-1948 alone, 31 million people had to depart from their places of abode in Central Europe. Add to this 3 more millions in the period of 1939-1943 and 3.5 million ethnic Germans alone in the years 1950-1995 (Dallinger, 1997: 23; Magocsi, 1995: 164-168), and soon it becomes clear that pressing this line may prove unmaking of peace and prosperity achieved in Europe after 1945 and 1989. Although the post-1945 position of the national borders was reaffirmed on the ground of international law at the beginning of the 1990s, yet, the consequences of the postwar border changes have not been tackled from the perspective of civil law. So far there has been no attempt at a thorough analysis what the extension of *acquis communautaire* to Poland upon its accession to the EU may mean in regard of German citizens' and their descendants' civil-law claims to indemnification for their property in the *deutsche Ostgebiete* or for return of it. A recently surfaced dimension of this dilemma is the fact that many of them can prop their claims with their right to or actual possession of Polish citizenship.

For the sake of peaceful and beneficial-for-all unfolding of the process of European integration it is high time enough attention was paid to this contentious issue now before some spectacular court case puts it into the limelight.

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DVOJNO DRŽAVLJANSTVO U OBLASTI OPOLE SILESIA U KONTEKSTU EVROPSKE INTEGRACIJE

Tomasz Kamusella

U oblasti Opole Silesija u Poljskoj, etnički Nemci čine jednu trećinu populacije. Većina njih je (ponovo) stekla nemačko državljanstvo devedesetih godina dvadesetog veka. To je podrazumevalo i dobijanje državljanstva EU-je. Zbog toga oni čine najveću kompaktnu grupu gradjana Nemačke/EU-je koji žive van Nemačke/EU-je. Kada bi Poljska stupila u EU-ju posle isuviše dugog perioda derogacije slobodnog kretanja njenih gradjana po Uniji, to bi stvorilo dvojako državljanstvo EU-je u oblasti Opole Silesija, sa svim privilegijama za nemačke državljane, a ograničeno za poljske državljane. Mišljenja sam da to može dovesti do ponovne pojave napetosti na nacionalističkoj osnovi sa širokim međunarodnim posledicama.