

【論文】

The Silesian Problem in Poland through the Prism of the Monitoring Cycles of the Framework Convention for the Protection of National Minorities: Comprehensive Analysis from the First Cycle to the Fourth

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1. Introduction

1.1. The Aim of this Paper

This study aims to analyze the discussions between the Council of Europe (CoE) and the Republic of Poland regarding the Silesian problem. After the fall of the Communist regime, the minority problem started to emerge in the public discourse of Poland in the 1990s (Michna 2020: 145)¹ in the context of so-called identity politics. This politically colored topic is related not only to Poland but also to CoE. Since Poland ratified the Framework Convention for the Protection of National Minorities (FCNM) in 2000, the two political bodies (CoE vs. Poland) continue to discuss groups that differ from the majority (Poles) in culture, language, ethnic consciousness, and so on.

FCNM determines that a ratified state is obligated to send a periodic report to the CoE's Advisory Committee of the Framework Convention (ACFC). These reports submitted by a ratified state are the basis of the ACFC monitoring cycle. All processes of the monitoring cycle consist of four documents: state reports, ACFC opinions, state comments, and ACFC resolutions. These documents are important sources for describing the official position of a ratified state and CoE regarding minority issues. In Poland, there has been a large disagreement between the state and CoE on the so-called Silesian problem since the first monitoring cycle. Briefly, Poland does not approve of the legislative recognition of the Silesian people and their language. In contrast, CoE criticizes Poland for a negative attitude toward the problem, because some Silesians demand legislative recognition such as “minority” or “regional language” from Poland.

¹ Ewa Michna, “The Silesian Struggle for Recognition Emancipation Strategies of Silesian Ethnic Leaders,” in Michna, Ewa and Katarzyna Warمیńska eds., *Identity Strategies of Stateless Ethnic Minority Groups in Contemporary Poland*. (Cham: Springer Nature Switzerland, 2020), pp. 145–173.

The fourth monitoring cycle regarding Poland was completed in October 2020 after the publication of the fourth ACFC resolution. Although Sadakane (2020)² analyzed the previous three monitoring cycles, the newest one (the fourth cycle) remains unanalyzed. Thus, this study aimed to answer two questions as follows:

1. What topics were discussed in the fourth cycle?
2. How have discussions on the Silesian problem changed from the first to the fourth monitoring cycle?

The analysis in this study will also help us understand how the demands of Silesians have changed over the 20-year discussion, as the opinions issued by ACFC are based on interviews with relevant stakeholders.

1.2. Previous Studies and Meaning of this Study

Both the Silesian problem and FCNM have been often mentioned in the previous studies such as Baranowska (2014),³ Łoziński (2019),⁴ Muś and Mazalik (2019),⁵ Michna (2020).⁶ Although each of these previous studies has some characteristics respectively, most of them neither describe documents of monitoring cycles in detail nor analyze the relationship between the Silesian problem and FCNM. Michna's description (Michna 2020) is relatively detailed, which clarifies the outline of present-day's discussions on the Silesian problem. However, Michna's study is also inadequate in terms of the following two points: (1) Michna points out that the arguments between Poland and CoE on the Silesian problem "have remained substantially the same and since 2003 have appeared in very similar form" (Michna 2020: 157).⁷ This mention is generally right, but as this study reveals in Chapter 3, the contents of the discussions on the Silesian problem in FCNM monitoring cycles have changed over

² Kazuhiro Sadakane, "[The Silesian Problem in the Republic of Poland from the Viewpoint of the Monitoring Processes by the Council of Europe (CoE)] Oushuu hyougikai monitaringu kara miru poorando kyowakoku no shironsuku mondai" (in Japanese), *Suraviaana (Slaviana)* 12 (2020), pp. 3–18.

³ Grażyna Baranowska, "Legal Regulations on National and Ethnic Minorities in Poland", *Przegląd Zachodni* II/2014 (2014), pp. 35–48.

⁴ Sławomir Łoziński, "Języki mniejszości narodowych w przestrzeni publicznej. Czy zmiana krajobrazu językowego w Polsce?", *Nauka* 3 (2019), pp. 125–145.

⁵ Anna Muś and Krystyna Mazalik, "„Ukryta opcja niemiecka” – mniejszość niemiecka i śląska grupa etniczna w przestrzeni publicznej. Studium przypadku", *Annales Universitatis Mariae Curie-Skłodowska Lublin–Polonia* XXVI-1 (2019), pp. 159–177.

⁶ Ewa Michna, "The Silesian Struggle for Recognition" (cf. note 1).

⁷ Ewa Michna, "The Silesian Struggle for Recognition" (cf. note 1).

time; (2) Although it is not a fault of Michna, her study does not refer to the fourth monitoring cycle which was done in October 2020. Thus, we have to describe the Silesian problem by adding new information from the fourth monitoring cycle.

Compared with the previous studies, this article is new in two aspects as follows: (1) This article analyzes all the four FCNM monitoring cycles conducted so far, which have not been fully referred to in the previous studies; (2) This study includes the newest monitoring cycle. Therefore, this study provides readers with the latest change in the discussions on the Silesian problem.

2. Assumptions

2.1. Meaning and Shortcomings of FCNM

FCNM is one of the international treaties of CoE, which aims to protect the cultural, linguistic, and religious rights of national minorities. It was established in CoE in 1995 and came into force in 1998. Even before FCNM, the international rules for protecting minorities existed. For example, the League of Nations prepared the framework for national minorities in the interwar period (Preece 1997: 81–84)⁸ However, the binding force of the interwar framework was so strong that it provoked conflicts between concerned states. The minority protection of the League of Nations was based on the principle of so-called “self-determination.” This principle, however, was not at all universal because only the new states established after World War I, such as Poland, Czechoslovakia, Romania, and the Kingdom of Serbs, Croats and Slovenes (Yugoslavia), were obliged to protect minorities.⁹ Poland also signed the so-called Little Treaty of Versailles in 1919.¹⁰ Poland had to take some specific measures for the domestic minorities because Article 14 of the Little Treaty determines that each member state of the Council of the League of Nations had “the right to bring to the attention of the Council any infraction, or any danger of infraction,” which means the minority issues in Poland was under the supervision of the League of Nations.¹¹ Other states mentioned

⁸ Jeniffer Jackson Preece, “Minority rights in Europe: from Westphalia to Helsinki”, *Review of International Studies* 23 (1997), pp. 75–92.

⁹ The exception was Greece. Although Greece did not take part in the World War I, the state also signed the treaty on minority with the Principal Allied and Associated Powers in 1920.

¹⁰ The Little Treaty of Versailles is a commonly used name because the treaty was signed at the same day as the Treaty of Versailles (June 28, 1919). Its official name is “Treaty between the Principal Allied and Associated Powers and Poland, signed at Versailles on June 28, 1919.” The full text of the Little Treaty is available on the website of the Office of Historian, US Department of State. <<https://history.state.gov/historicaldocuments/frus1919Parisv13/ch29>> Accessed: 2021/12/23.

¹¹ Poland strongly opposed the signature of the Little Treaty because it was clear that newborn Poland

above (Czechoslovakia, Romania, Yugoslavia) also had similar obligations as Poland, while the states that made up the minority protection system in the interwar period and even Germany had no such obligations. These inequalities among concerned states made the League of Nations' minority protection system dysfunctional.

Because of the failure of the League of Nations, the international arena during the Cold War was not active in protecting national minorities. However, some important treaties have been signed, such as the Convention for the Protection of Human Rights and Fundamental Freedoms (the so-called European Convention on Human Rights) in 1950 (CoE), the International Covenant on Civil and Political Rights in 1966 (the United Nations), and Helsinki Final Act in 1975 (the Conference on Security and Co-operation in Europe). These previous attempts are relatively passive though because they only mention the principle of the non-interference of states with minorities. Only at the end of the Cold War did minority issues enter the discussion worldwide (Preece 1997: 88).¹² FCNM is one result of such discussions. After the end of the Cold War, Europe finally established a framework dedicated to minority issues. As of 2021, most member states of CoE, including Poland (39 out of 47), have signed and ratified FCNM.¹³ Poland signed the convention on February 1, 1995, and ratified it on December 20, 2000.

FCNM consists of the main text and Explanatory Report. English and French texts are regarded as authentic. In this study, I referred to the English version. The role of FCNM in present-day Europe is tremendously large. FCNM demands the active protection of minorities from states to prevent assimilation. Kristin Henrard highly evaluates FCNM because it was “indeed the first instrument entirely devoted to minorities and their rights” (Henrard 2008: 95).¹⁴

would have a lot of minority population in its territory. However, the political power balance at the time did not allow Poland to deny the treaty made up by the victorious states of World War I. Carole Fink points out that the Little Treaty itself was “dictated” to Poland. See: Carole Fink, “The Minority Question at the Paris Peace Conference: The Polish Minority Treaty, June 28, 1919,” in Manfred F. Boemke, Gerald D. Feldman, Elisabeth Glaser eds., *The Treaty of Versailles: A Reassessment after 75 Years*.(Cambridge: Cambridge University Press, 1998), pp. 249–274.

¹² Preece, “Minority rights in Europe” (cf. note 8).

¹³ See the official leaflet of FCNM: *Framework Convention for the Protection of National Minorities* <<https://rm.coe.int/fcnm-leaflet-2020-en-final/1680a0bacc>> Accessed: 2021/10/18.

¹⁴ Kristin Henrard, “The Added Value of the Framework Convention for the Protection of National Minorities; the Two Pillars of an Adequate System of Minority Protection Revisited,” in Verstichel, Annelies et al. eds., *The Framework Convention for the Protection of National Minorities: A Useful Pan- European Instrument?* (Antwerp: Intersentia, 2008), pp. 91–118.

However, in general, CoE treaties are less legally binding than the regulations of the European Union (Vacca 2011: 348)¹⁵ FCNM cannot forcibly demand the protection of minorities from states. On the contrary, the regulations of the FCNM only request cooperation from states. For example, Article 14(2) of FCNM states the following:

[...], the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language (emphasis is the author's).

As Article 14(2) shows, FCNM requires states to protect minority rights “as far as possible” within the domestic laws of each state. Even the signature on FCNM is not mandatory for a CoE member state.¹⁶ Thus, its binding force is politically changeable. Therefore, some scholars such as Rianne Letschert consider FCNM a political system, not juridical (Letschert 2005: 19).¹⁷ The weak binding force of FCNM conversely means that a ratified state has a large amount of discretion, particularly in “nominating” minorities. FCNM itself does not define the term “minority,” although it is the most important concept of the framework. Note that a universal definition of minority is almost impossible because the criteria of the definition are variable according to the social, historical, and political contexts in a given state. Point 12 of the FCNM’s Explanatory Report recognizes the difficulty of defining “minority.” It states that “it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States.” As such, FCNM “decided to adopt a pragmatic approach.” In this context, the word “pragmatic” means that a nomination of the minority is up to a state. Therefore, there is much room for interpretation in this “pragmatic” approach. A ratified state cannot only choose a certain group as an “officially recognized” minority but also exclude them on its own initiative.

2.2. FCNM Monitoring Cycle System

Nevertheless, ratified states cannot treat minority problems in their territory in the way

¹⁵ Alessia Vacca, “The Council of Europe and the European Union Frameworks in the Legal Protection of Minority Languages: Unity or Diversity?”, *ESUKA-JEFUL* 2-1 (2011), pp. 347–366.

¹⁶ As of 2021, four states have signed, but not ratified, FCNM (Belgium, Iceland, Greece, and Luxembourg), and four states have neither signed nor ratified (Andorra, Monaco, France, and Turkey).

¹⁷ Rianne Letschert. *The Impact of Minority Rights Mechanisms* (Hague: T.M.C. Asser Press, 2005).

they want to. Section IV of FCNM (Articles 24–26) determines the process to monitor whether a ratified state takes effective activities for minority protection, especially in the field of legislation. Although Article 25 of FCNM determines the frequency of monitoring as “on a periodic basis,” a monitoring process is usually conducted once every five years. Summarizing the FCNM website, the entire process of a monitoring cycle consists of four documents:¹⁸

(1) State reports by the ratified state.

This is the first step of the monitoring cycle. The ratified state summarizes its attempts for minority protection and submits reports to CoE.

(2) Opinions by the Advisory Committee of FCNM (ACFC).

ACFC regularly visits ratified states and holds meetings with stakeholders such as government officials, parliamentarians, representatives of minorities, and NGOs. ACFC issues opinions based on these regular visits and the state report submitted.

(3) State comments by the ratified state.

After the ACFC opinion, the ratified state submits replies to the opinion. The replies are called “comments.” If the ratified state does not agree with some parts of the opinion, the state sometimes argues against ACFC.

(4) Resolutions by ACFC

Summarizing these steps, ACFC prepares the resolution of the monitoring cycle.

Among these documents, resolutions are highly formal in nature and do not provide a substantive discussion. In this study, the analysis concentrates on three documents: the state report, ACFC opinion, and state comment.

The monitoring documents are usually published in English, but sometimes in French and the official language of the ratified state (Polish in the case of Poland). In some cases, however, documents written in languages other than English are not accessible on the official FCNM website. For example, the state report of Poland in the third monitoring cycle is available only in English. For this reason, I used the English version in this study.

The ACFC opinions, however, should not be regarded as neutral because, in most cases, ACFC clearly shows its stance on minority issues. In the case of the Silesian problem, ACFC is almost always favorable for Silesians and criticizes the Polish state for its negative attitude toward them. This fact does not mean that ACFC opinions are just a reflection of

¹⁸ See the official website of FCNM: *Monitoring the implementation of the Framework Convention for the Protection of National Minorities* <<https://www.coe.int/en/web/minorities/monitoring>> Accessed: 2021/10/19.

arguments of Silesian activists. As mentioned above, ACFC collects various information from the concerned organizations or individuals including the government authorities or NGOs. Therefore, ACFC opinions are original results of analysis and reconstruction of information collected by ACFC.

2.3. Basic Information on the Silesian Problem in Poland

As mentioned in the Introduction, a large disagreement exists between CoE and Poland on the Silesian problem, despite the 20-year history of the discussion. The disagreement between the two political bodies can be found in the official documents of the monitoring cycles of FCNM. Before analyzing these documents, it is useful to summarize here the background of the Silesian problem.

With the democratization of Eastern Europe in the 1990s, the discussion on the status of minorities started to appear in the European public sphere. The discussion on the ethnicity of Silesians is also one of these minority topics (Michna 2020: 154).¹⁹ At the same time, the discussion on the linguistic status of the Silesian vernacular came out, which argued that “Silesian dialect” is not appropriate because the wording is depreciating compared with “language.” For this reason, some Silesian scholars or activists prefer to use the wording such as Silesian language (*język śląski*), Silesian speech (*mowa śląska*) or Silesian ethnolect (*etnolekt śląski*) (Siuciak 2012: 33).²⁰ The wording “Silesian language” is not just a slogan, but based on practical activities, especially the attempt of standardizing the Silesian vernacular such as the foundation of the publishing house “Narodowa Oficyna Śląska” in 2006, the establishment of the Silesian Wikipedia²¹ or the foundation of the organization “Pro Loquela Silesiana” in 2008 (Kamusella and Rocznik 2011: 292).²² However, the attempt of raising the status of the Silesian vernacular has been a still controversial topic because the vernacular has been traditionally treated as a dialect in Polish dialectology. This problem is not a linguistic issue but is connected with the political movements, which demand the official recognition of

¹⁹ Ewa Michna, “The Silesian Struggle for Recognition” (cf. note 1).

²⁰ Mirosława Siuciak, “Czy w najbliższym czasie powstanie język śląski?”, *Poznańskie Studia Polonistyczne. Seria Językoznawcza* 19/39 (2012), pp. 31–44.

²¹ Silesian Wikipedia is one of the attempts of Silesian linguistic standardization. Therefore, all the articles are written according to the Silesian orthographic rules. As of January 12, 2022, there exist 54,778 articles in the Silesian Wikipedia. See: <https://szl.wikipedia.org/wiki/Przodni%C5%8F_zajta> (Accessed: 2022/01/12).

²² Tomasz Kamusella and Andrzej Rocznik, “Sztandaryzacyjo ślōnski godki / Standaryzacja języka śląskiego,” in И. В. Абисогомян ed., *Лингвокультурное пространство современной Европы через призму малых и больших языков*. (Tartu: Tartu University Press, 2011), pp. 288–294.

Silesians as a characteristic human group in Poland. Table 1 summarizes these political movements or remarkable events such as national censuses, Polish domestic law specializing in minority issues. These events and terms are often referred to in the documents of the monitoring cycles of FCNM.

Table 1: Chronological Table Regarding the Silesian Problem

1990	<p>Foundation of the “Silesian Autonomy Movement”</p> <p>The political organization “Silesian Autonomy Movement” was founded to gain more powerful local governance in the region.</p>
1998	<p>Lawsuit of the Union of the Population of Silesian Nationality</p> <p>The organization called the “Union of the Population of Silesian Nationality” sued Poland for the violation of citizens’ freedom of association. The European Court of Human Rights (ECHR) accepted an application submitted by the Union and its agent (No. 44158/98).²³</p>
2001	<p>First Judgment of ECHR on the Union’s Lawsuit</p> <p>On December 20, 2001, the Fourth Section of the ECHR judged that no violation was found. That is, ECHR supported the state’s opinion.</p>
2002	<p>Union’s Lawsuit Goes to the Grand Chamber of ECHR</p> <p>On March 20, 2002, Union members and their agent requested the case be referred to the Grand Chamber of ECHR.</p>
2002	<p>National Census in Poland</p> <p>The national census in 2002 was the first national census after the fall of the Communist Regime in Poland. The results for “nationality” indicate that Silesians were numerically the second-largest group in Poland.²⁴</p>
2004	<p>Final Judgment of ECHR on the Union’s Lawsuit</p> <p>The Grand Chamber of ECHR supported the first judgment, meaning no violation by the Polish state was found. This judgment is final on the case.</p>

²³ All information on the lawsuit between the Union and Poland in ECHR is based on the part “PROCEDURE” in the ECHR report: ECHR. *Reports of Judgements and Decisions 2004-I*. (Köln, Berlin, München: Carl Heymanns Verlag, 2004), pp. 219–272.

²⁴ According to the national census in 2002, the numbers of nationality (*narodowość* in Polish) are as follows: Polish: 36,983,700 (96.74%), Silesian: 173,200 (0.45%), German: 152,900 (0.40%), Ukrainian: 31,000 (0.08%), Lemko: 5,900 (0.02%), Kashubian: 5,100 (0.01%). See: Główny Urząd Statystyczny. *Raport z wyników. Narodowy Spis Powszechny Ludności i Mieszkań 2002*. (Warszawa: Główny Urząd Statystyczny, 2003), pp. 39–40.

2005	<p>Establishment of the Minority Act in Poland</p> <p>The Polish parliament established the Minority Act (Dz. U. 2005 nr 17 poz. 141), which lists the names of national and ethnic minorities.²⁵ The Act also recognizes Kashubian as an independent language apart from Polish (a regional language). The name of Silesians and their speech are not been mentioned in the Act even though Silesians are the largest minority group in the 2002 census.</p>
2011	<p>National Census in Poland</p> <p>In the 2011 census, respondents were asked their national or ethnic belonging (identification) and languages used at home. As a result, the number for Silesian “identification” was 817,000, meaning that 2.12% of the whole population declared themselves Silesians.²⁶ Furthermore, 509,000 people indicated speaking the “Silesian language” at home. The 2011 census revealed that Silesians are the second-largest group in Poland in terms of both identity and language.</p>
2011	<p>Silesian Autonomy Movement Gained Seats in the Local Assembly</p> <p>The Silesian Autonomy Movement won seats in the Silesian voivodeship Assembly and became part of the regional government.²⁷</p>
2017	<p>Lawsuit of the Association of the People of Silesian Nationality</p> <p>The “Association of the People of Silesian Nationality” sued Poland for violating the European Convention on Human Rights, specifically Articles 9 (the freedom of thought, conscience, and religion), 11 (the freedom of expression), and 14 (the prohibition of discrimination).²⁸ In August 2017, ECHR accepted an application submitted by the Association and its agent.²⁹</p>

²⁵ Article 2 of the Minority Act provides two categories of minorities: national and ethnic. The following nationalities belong to the former category: Belarusian, Czech, Lithuanian, German, Armenian, Russian, Slovakian, Ukrainian, and Jewish. The minorities without kin-state belong to the latter category: Karaim, Lemko, Roma, and Tatar.

²⁶ According to the national census in 2011, the numbers of identification (*identyfikacja* in Polish) are as follows: Polish: 36,999,000 (96.07%), Silesian: 817,000 (2.12%), Kashubian: 229,000 (0.59%), German: 126,000 (0.32%), Ukrainian: 49,000 (0.12%), Lemko: 10,000 (0.03%). See: Główny Urząd Statystyczny. *Raport z wyników. Narodowy Spis Powszechny Ludności i Mieszkań 2011*. (Warszawa: Główny Urząd Statystyczny, 2012), p. 106.

²⁷ According to Roman Szul, the Autonomy Movement initially had little support from local citizens because their anti-Polish attitude was too strong. However, the organization became more moderate and started to obtain broader support from the local people. See: Roman Szul, “Poland’s Language Regime Governing Kashubian and Silesian,” in Cardinal, Linda and Selma K. Sonntag eds., *State Traditions and Language Regimes*. (Montreal & Kingston, London, Ithaca: McGill-Queen’s

2019	<p>Silesian Autonomy Movement Joined the Civic Coalition</p> <p>In August 2019, the Silesian Autonomy Movement joined the Civic Coalition (<i>Koalicja Obywatelska</i> in Polish). The coalition is an electoral alliance of large opposition parties such as the Civic Platform (<i>Platforma Obywatelska</i>), the Modern (<i>Nowoczesna</i>), and the Greens (<i>Partia Zieloni</i>).</p>
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As Table 2 shows, the existence of Silesians cannot be ignored in present-day Poland. Silesians are not only numerically the largest group, but also engage in political activities on a national scale. The Silesian problem originated in the 1990s as Michna (2020: 145) indicates.³⁰ Thus, while the problem is relatively new, it is the most serious and outstanding minority issue in Poland. The impact of the issue is not limited to the Silesian region but felt nationwide. Although there are several minority groups other than Silesians in Poland, these groups seem to be satisfied with the status they are enjoying and do not oppose the state.

Poland's attitude toward the Silesian problem has been unchanged for 20 years regardless of the dominant political party. Since the ratification of FCNM in 2000, the political regime has changed three times in Poland between the Democratic Left Alliance (*Sojusz Lewicy Demokratycznej*), the Law and Justice (*Prawo i Sprawiedliwość*) and the Civic Platform (*Platforma Obywatelska*). Although these parties largely differ in their policies and ideologies, the arguments of the state have been consistently unfavorable toward the independence of Silesians, whatever form it takes. Among Polish politicians, especially

University Press, 2015), p. 91.

²⁸ The Association was founded in 2011. After its foundation, the Association sent an application to the Polish official register. The application was finally accepted, but the prosecutors' office made a cassation appeal claiming it should be reconsidered. In April 2014, the Supreme Court made the judgment that it is impossible to register an organization with the name "Silesian nationality" because such a nationality does not exist. In August 2014, the Opole District Court decided to delete the registration of the Association. See: (1) Ewa Michna, "Narodowy Spis Powszechny Ludności i Mieszkań w 2011 r. i jego wykorzystanie w polityce tożsamości i walce o uznanie. Casus Ślązaków", *Studia Migracyjne – Przegląd Polonijny* 2-148 (2013), pp. 155–158; (2) An online article of *Wprost*: "Sąd usunął stowarzyszenie Ślązaków z KRS. "Będziemy walczyć." <<https://auto.wprost.pl/462811/sad-usunal-stowarzyszenie-slazakow-z-krs-bedziemy-walczyc.html>> Accessed: 2021/10/19.

²⁹ The application documents relating to the lawsuit are open on the top page of the Association's website: "Skarga SONŚ przyjęta do rozpatrzenia w Strasburgu." <<http://slonzoki.org/>> Accessed: 2021/10/19.

³⁰ Michna, "The Silesian Struggle" (cf. note 1)

Jarosław Kaczyński in particular had a negative view of the Silesian problem. In 2011, Kaczyński, who was the leader of the Law and Justice, the largest opposition party at that time, mentioned that the Silesian Autonomy Movement is a “hidden German option.”³¹ This comment is certainly slanderous because Kaczyński showed no evidence of the view. More than anything, the Silesian Autonomy Movement is a legal political party.

Kaczyński’s abovementioned argument against Silesians, however, cannot be treated as an extreme exception. For example, the Polish Supreme Court issued a news release in 2013 on the Silesian problem as follows.³²

Demand for gaining autonomy and feeling the full authority of the “Silesian nationality” in the Silesian region [...] should be assessed as a demand for weakening the unity and integrality of the Polish state, which is contradictory to the regulations derived from Article 3 of the Constitution of Poland (translation and emphasis are the author’s).

Therefore, it is natural that the Silesian problem is repeatedly mentioned in the monitoring cycles of FCNM. FCNM aims to urge effective activities to create “appropriate conditions enabling” minorities “to express, preserve, and develop this identity” (FCNM: Preamble). Conversely, Polish authorities regard the expression of “Silesian nationality” as an attempt to weaken “the unity and integrality of the Polish state,” as stated in the abovementioned news release.

3. Analysis of the FCNM Monitoring Cycles

3.1. Chronological Table Regarding FCNM and Poland

In this section, I analyze the monitoring cycles of FCNM regarding Poland. First, I summarize a chronological table from the signature of Poland to FCNM to the end of the fourth monitoring cycle.

³¹ See Kaczyński’s comment on the Silesian Autonomy Movement: “Kaczyński: ZakamufLOWaną opcją niemiecką jest śląskość w wydaniu RAŚ.” <<https://polskatimes.pl/kaczynski-zakamufLOWana-opcja-niemiecka-jest-slaskosc-w-wydaniu-ras/ar/389276>> (Accessed: 2022/01/12)

³² The news release quoted here is freely available on the Internet: *Komunikat prasowy dotyczący sprawy III SK 10/13*. <https://www.sn.pl/aktualnosci/SitePages/Komunikaty_o_sprawach.aspx?ItemSID=21-271e0911-7542-42c1-ba34-d1e945caefb2&ListName=Komunikaty_o_sprawach&rok=2013> Accessed: 2021/10/16.

Table 2: Chronological Table Regarding FCNM and Poland

1995/02/01	Poland signed FCNM	
2000/12/20	Poland ratified FCNM	
2001/04/01	FCNM came into effect in Poland	
2002/07/10	First state report	First Monitoring Cycle
2003/11/17	First ACFC opinion	
2004/05/19	First state comment	
2004/09/30	First ACFC resolution	
2007/11/08	Second state report	Second Monitoring Cycle
2009/03/08	Second ACFC opinion	
2009/12/07	Second state comment	
2012/11/28	Second ACFC resolution	Third Monitoring Cycle
2012/12/13	Third state report	
2013/11/28	Third ACFC opinion	
2014/05/21	Third state comment	
2015/03/04	Third ACFC resolution	Fourth Monitoring Cycle
2019/04/09	Fourth state report	
2019/11/06	Fourth ACFC opinion	
2020/04/06	Fourth state comment	
2020/10/21	Fourth ACFC resolution	

3.2. Monitoring Cycles from first to fourth

In this section, I analyze the FCNM monitoring cycles regarding Poland. All the CoE documents regarding the monitoring cycles of Poland are available on the FCNM website.³³

3.2.1. First Monitoring Cycle

The first monitoring cycle occurred between July 2002 and September 2004. During the first monitoring cycle, the lawsuit between the Union of the Population of Silesian Nationality and Poland was yet to be considered in the Grand Chamber of ECHR (see Table 1 in 2.4). Naturally, this case was mentioned in the first monitoring cycle. In the first state report (ACFC 2002: 6),³⁴ Poland emphasizes that the fourth section of ECHR judged that the rejection of registration of the Union is not a violation of the freedom of association.

³³ See the official website of FCNM: *Country-specific monitoring. Poland*. <<https://www.coe.int/en/web/minorities/poland>> Accessed: 2021/10/18.

³⁴ ACFC. *Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* (ACFC/SR(2002)2).

In contrast, point 28 of the first opinion of ACFC (ACFC 2004)³⁵ mentions the number of Silesians recorded in the first national census in 2002, urging Poland “to continue their dialogue with the Silesians.” In point 58, ACFC also says that the ECHR judgment considers the freedom of association, not whether or not the “Silesian nationality” exists.

Poland, in point 28 of the first state comment (ACFC 2004),³⁶ responded to ACFC that Silesians are one of the regional groups in Poland, but not an ethnically independent group. Poland added that ACFC does not have the authority to ask whether Silesian nationality exists or not, mentioning that FCNM does not define the concept of “minority.” What Poland argues here in point 28 is right. As shown in Section 2.2, FCNM is just a principle of the protection of minorities. The nomination of minorities, that is, which group should be the subject of protection, is up to the concerned state. Nevertheless, Poland’s argument was not persuasive because the state criticized Silesians in point 28 of the first state comment:

The main reason for such large self-identification of the part of the inhabitants of Silesia as belonging to a different nation is the frustration resulting from the poor economic situation in which this region has found itself (emphasis is the author’s).

Both the tone and content of this part are very aggressive. Poland assumed the Silesian activists are based on “the frustration resulting from the poor economic situation” without providing evidence thereof. This part clearly shows that Poland originally had a negative attitude toward the Silesian problem.

Comparing the later monitoring cycles, however, the proportion of discussions on the Silesian problem in the first monitoring cycle was relatively small. The first opinion of ACFC consists of 133 points in total, of which only two points (point 28 and 58) mention the status of Silesians. Clearly, the central topic of the discussion was the existence of “Silesian nationality.” The linguistic issues in Silesia, in contrast, did not appear in the first monitoring cycle.

3.2.2. Second Monitoring Cycle

The second monitoring cycle took place between November 2007 and November 2012. The second state report (ACFC 2007)³⁷ does not mention the Silesian problem. Considering

³⁵ ACFC. *Opinion on Poland* (ACFC/INF/OP/I(2004)005).

³⁶ ACFC. *Comments of the Government of Poland on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Poland* (GVT/COM/INF/OP/I(2004)005).

³⁷ ACFC. *Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework*

the lawsuit in ECHR and discussions in the first cycle, Poland must have been aware of the Silesian problem. Therefore, silence indicates that Poland intentionally ignored the topic of Silesia.

In the second opinion of ACFC (ACFC 2009),³⁸ ACFC mentions the Silesian problem in nine of the 230 points (point 10, 29, 32, 35, 36, 37, 38, 188, and 226). ACFC is repeatedly concerned that Poland does not take appropriate actions to resolve the Silesian problem in point 37 and 38. Comparing the first ACFC opinion (2004), two noticeable changes are evident in the second opinion of ACFC (2007).

First, in the second opinion, ACFC starts to mention democratic procedures regarding minorities. Some members of the Lower House of Poland (*Sejm*) were elected from minority communities in the 2007 election: German, Ukrainian, and Belarusian (point 188). In point 188, ACFC states that “a number of members of the *Sejm* declare themselves representatives of the Silesian minority.” Here, ACFC is trying to provide positive reasons for the official recognition of Silesians from the viewpoint of the democratic system (number of representatives in the parliament). Second, ACFC starts to mention the linguistic issue, arguing that “a substantial number of persons” are “speaking the Silesian language at home” (point 226). ACFC is aware that some parliament members are trying to amend the Minority Act for the legal recognition of the “Silesian language” (point 32). This point is also related to the abovementioned democratic procedure.

Poland, in the second state comment (ACFC 2009),³⁹ argues against the opinion of ACFC, stating that Silesians do not satisfy the conditions found in the Minority Act (point 36) and emphasizing that Poland is taking various actions to preserve Silesian regional culture, history, folklore, etc. (point 38). Poland did not respond to the linguistic issue in the second state comment.

Noteworthy is that the expression “Silesian language” appeared for the first time in the second ACFC opinion. Sadakane mentions that Silesian linguistic “independence” started to be connected to Silesian ethnic or national “independence” in the second monitoring cycle (Sadakane 2020: 14)⁴⁰ The linguistic issue (Silesian language vs. Silesian dialect) is more often discussed in the next monitoring cycle.

Convention for the Protection of National Minorities (ACFC/SR/II(2007)006).

³⁸ ACFC. *Second Opinion on Poland* (ACFC/OP/II(2009)002).

³⁹ ACFC. *Comments of the Government of Poland on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Poland* (GVT/COM/II(2009)003).

⁴⁰ Kazuhiro Sadakane, “[The Silesian Problem]” (cf. note 2).

3.2.3. Third Monitoring Cycle

The third monitoring cycle took place between December 2012 and March 2015. The third state report (ACFC 2012),⁴¹ like the previous one (2007), did not mention the Silesian problem.

However, the third opinion of ACFC (2013)⁴² remarks on the problem in nine of the 213 points (point 24, 25, 27, 28, 29, 35, 60, 178, and 206). ACFC, showing the number of Silesians in the national census in 2011 (847,000), emphasizes the necessity of the “protection of the Silesian identity and language” (point 24). Remarkably, ACFC mentions the “Silesian language” more often than in the second cycle. As mentioned, the third ACFC opinion has nine points on the Silesian problem. Of these nine points, seven focus on the linguistic issue in some form (point 24, 25, 27, 28, 29, 178, 206). In addition, ACFC’s comments on the linguistic issue in Silesia are more in-depth than before. For example, ACFC argues that the Polish authorities “should assist standardization efforts in close cooperation with the language group” (point 25). The “language group” in this context means the speakers of the Silesian local language. In addition, points 28 and 178 of the third opinion mention the status of the “regional language,” which is defined in Article 19 of the Minority Act⁴³ referring to the attempts to reform the Act.

In the third state comment (ACFC 2014),⁴⁴ Poland mentions the Silesian problem in four of the 212 points (point 24, 25, 29, and 206). All four points refer to linguistic issues in

⁴¹ ACFC. *Third Report Submitted by Poland Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities* (ACFC/SR/III(2012)005).

⁴² ACFC. *Third Opinion on Poland* (ACFC/OP/III(2013)004).

⁴³ Article 19 of the Minority Act defines the concept of “regional language” based on the European Charter for Regional and Minority Languages. According to the regulation of the Act, only the Kashubian language is appointed as a “regional language” in Poland. The concept, however, is accepted in the Minority Act for legislating the Kashubian language because Kashubians, unlike other minorities such as Ukrainians, Germans, or Lemko, have retained a relatively close relationship with the majority, Poles. See: Kazuhiro Sadakane, “The Intentional Distinction between a Regional and a Minority Language in Poland’s Minority Act”, *Die Welt der Slaven* 65 (2020), p. 234.

In addition, Roman Szul states, “[...] considering Kashubian a minority language would mean that Kashubians would be regarded as a national minority and not ethnic Poles. This was not acceptable to either the Polish authorities or most Kashubians.” Quoted from: Roman Szul, “Poland’s Language Regime,” (cf. note 27), p. 89.

⁴⁴ ACFC. *Comments of the Government of Poland on the Third Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Poland* (GVT/COM/III(2014)002).

some form. Denying point 25 of the third opinion of ACFC, Poland states the following (point 25):

[...], support for actions aimed at imposed standardization of the Silesian dialect would be an artificial and unjustified process, since it could threaten the richness and diversity of the Silesian local dialects, [...] it should be noted that the issues relating to the rights of users of local dialects and dialects of Polish are not included within the scope of the Framework Convention for the Protection of National Minorities (emphasis is the author's).

Point 25 of the third state comment, like point 28 of the first state comment (2004), emphasizes that ACFC is not in the position to make comments on the Silesian problem. In addition, point 29 of the third state comment states that the Polish authorities are “open to dialogue with the users of the Silesian dialect of Polish” (emphasis is the author's).

In the third monitoring cycle, Poland consistently uses the expression “Silesian dialect.” Here, the intention of the state is obvious. If the Silesian local vernacular were regarded as a “language” apart from Polish, it would also be possible to regard the independence of its users (Silesians) apart from Poles (Sadakane 2020: 14).⁴⁵ Therefore, Poland cannot accept the wording “Silesian language.” The linguistic issue, more specifically, the recognition of the linguistic independence of the Silesian local speech (language vs. dialect), is discussed more often in the third monitoring cycle. The terminological hierarchy⁴⁶ can be clearly observed in the discussion process.

Silesian local vernacular is generally called “Silesian dialect.” Its independence has been discussed often since the 1990s⁴⁷. Thus, the distinction of “language” and “dialect” seems old. The discussions in the third monitoring cycle, however, differ from the discussion in the past because they are related to the legal status guaranteed by the Minority Act. After the establishment of the Act in 2005, a growing number of supporters of the argument of “Silesian

⁴⁵ Sadakane, “[The Silesian Problem]” (cf. note 2)

⁴⁶ As Einar Haugen describes, two terms (language and dialect) are neither equal nor changeable because “language” is always applied as “superordinate” term of “dialect,” but “dialect” is always “subordinate” of language. See: Einar Haugen, “Dialect, Language, Nation”, *American Anthropologist* 68 (1955), p. 923.

⁴⁷ According to Mirosława Siuciak, the concept of “language” became an ideology in 1990s, in the attempts of raising the prestige of Silesians as an ethnic group. See: Mirosława Siuciak, “Czy w najbliższym czasie powstanie język śląski?” (cf. note 20), p. 33.

as a regional language” are evident. This argument is based on the treatment of the Kashubian language in the Minority Act. Article 19 of the Act states that Kashubian is a “regional language” in Poland, but does not treat Kashubians as an “ethnic minority.” However, the Minority Act treats Kashubians in the same way as other officially recognized minorities such as Germans, Ukrainians, and Lemkos in the formulating of the “community with a language as referred to in Article 19.” Therefore, a given human group can be treated as a *de facto* minority when their language is officially recognized. Kashubians are not officially recognized as a minority; however, they are treated like a minority due to their regional language (Kashubian). In other words, a human group that has its own “regional language,” can be recognized as an independent human group in the framework of the Minority Act. Although the concept “regional language” itself was made just for Kashubians (Sadakane 2020: 234),⁴⁸ the concept has its influence on the discussions of the Silesian problem. Through the concept of “regional language,” the Silesian independence can be argued without the notion of ethnicity, such as Kashubians that are not an ethnically independent group are regarded as a *de facto* minority.

3.2.4. Fourth Monitoring Cycle

The fourth monitoring cycle took place between April 2019 and October 2020. The fourth state report (ACFC 2019)⁴⁹ does not mention the Silesian problem. This is not surprising because Poland did not mention it in previous state reports (2007 and 2012). Poland does not address the Silesian problem unless it is indicated by ACFC.

The fourth opinion of ACFC (ACFC 2019)⁵⁰ comments on the Silesian problem in eight of the 191 points (point 5, 20, 21, 22, 27, 29, 31, and 165) and also in “Further Recommendations.” In points 5 and 20, ACFC mentions the four unsuccessful reform bills of the Minority Act. These attempts are presented in chronological order in Table 3.

Table 3: Attempts of Reform Bills of the Minority Act

2014	The Lower House did not accept a proposal from citizens (citizens’ project).
2015	President Andrzej Duda vetoed a reform bill from parliament.
2016	The Lower House did not accept the citizens’ project.
2018	The Lower House did not accept the citizens’ project.

⁴⁸ Sadakane “The Intentional Distinction” (cf. note 43).

⁴⁹ ACFC. *Fourth Report submitted by Poland Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities* (ACFC/SR/IV(2019)001).

⁵⁰ ACFC. *Fourth Opinion on Poland* (ACFC/OP/IV(2019)003).

The citizens' project (*Obywatelski projekt* in Polish) is the name of an option for legal reform based on the Act on the Exercise of Legislative Initiative by Citizens.⁵¹ In this procedure, a reform bill can be proposed by a group of more than 100,000 citizens, not by parliament members. In the 2014 and 2016 projects, Silesian activists passed the proposal of a reform bill of the Minority Act to the speaker of the Lower House. The official documents of the citizens' projects in 2014 and 2016 were officially published on the Internet.⁵² The citizens' project in 2018 is also accessible on the web,⁵³ although its authority cannot be guaranteed. All the citizens' projects (2014, 2016, and 2018) proposed that the status of Silesians be as an officially recognized minority. Regarding parliament's action, the reform bill of the Minority Act was proposed in 2015. According to information from the Ministry of Interior and Administration, the proposed bill expanded the use of minority languages, especially in administrative organs.⁵⁴ This bill, however, was vetoed by President Andrzej Duda in October 2015.⁵⁵ Summarizing these unsuccessful attempts, ACFC "strongly regrets that no progress has been made regarding the requests for recognition of the Silesians as an ethnic minority" in point 21 of the fourth opinion.

⁵¹ The original name of the Act on the Exercise of Legislative Initiative by Citizens is the following: Ustawa z dnia 24 czerwca 1999 r. o wykonywaniu inicjatywy ustawodawczej przez obywateli (Dz. U. 1999 nr 62 poz. 688).

⁵² See the Citizens' Project in 2014: *Obywatelski projekt ustawy o zmianie ustawy o mniejszościach narodowych i etnicznych oraz o języku regionalnym, a także niektórych innych ustaw* (Druk nr 2699). <<http://orka.sejm.gov.pl/Druki7ka.nsf/0/51DDA35DF112B5A2C1257D4200374317/%24File/2699.pdf>> Accessed: 2021/10/18;

See the Citizens' Project in 2016: *Obywatelski projekt ustawy o zmianie ustawy o mniejszościach narodowych i etnicznych oraz o języku regionalnym, a także niektórych innych ustaw* (Druk nr 27). <<http://orka.sejm.gov.pl/Druki8ka.nsf/0/ABF5E5114F97107FC1257F5D004546D6/%24File/27-s.pdf>> Accessed: 2021/10/18.

⁵³ See the Citizens' Project in 2018: *Projekt. Ustawa z dnia ... 2018 roku o zmianie ustawy o mniejszościach narodowych i etnicznych oraz o języku regionalnym oraz niektórych innych ustaw*. <<https://monika-rosa.pl/wp-content/uploads/2019/03/Slaski-jezyk-regionalny-usta-wa-o-zmianie-ustawy-o-mniejszos%CC%81ciach-narodowych-i-etnicznych-oraz-o-je%CC%A8zyku-regionalnym.pdf>> Accessed: 2021/10/18.

⁵⁴ See the official website of the Ministry of Interior and Administration: *Parlament przyjął nowelizację ustawy o mniejszościach narodowych i etnicznych*. <<http://mniejszosci.narodowe.ms.gov.pl/mne/komisja-wspolna/aktualnosci/9434,Parlament-przyjal-nowelizacje-ustawy-o-mniejszosciach-narodowych-i-etnicznych.html>> Accessed: 2021/10/18.

⁵⁵ See the official website of the President of Poland: *Prezydent zawetował trzy ustawy* (26 października 2015). <<https://www.prezydent.pl/prawo/ustawy/zawetowane/art,2,prezydent-zawetowal-trzy-ustawy.html>> Accessed: 2021/10/18.

In point 165, ACFC remarks that a legal measure for representing national minorities is not enough in the Polish electoral system, despite that some parliament members declared they belonged to a minority such as Belarusian, Ukrainian, Jewish, Kashubian, and Silesian. In the Polish electoral system, an electoral committee representing a national minority has the privilege of elections because it is exempt from the obligation to obtain at least 5% of the valid votes.⁵⁶ According to ACFC, this privilege does not work effectively for minorities in the current electoral system for the House of Representatives. This argument (point 165) is very short despite its importance. Therefore, I explain it in detail as follows:

1. The members of the Lower House are elected based on the party-list proportional representation system in multi-member constituencies. It means, a minority group can elect their representatives only if they are densely populated in one constituency. If not, valid votes from minority members cannot be collected for a candidate they want. Thus, the abovementioned privilege (exemption from the obligation to obtain at least 5% of the valid votes), in fact, is not a privilege at all for most minorities because they are much smaller than the majority in most constituencies.
2. Article 197 of the Electoral Code determines that the abovementioned privilege can be enjoyed by electoral committees of national minorities. It should be remembered that minorities in Poland are divided into two types in the current law, the Minority Act: (1) national minority; (2) ethnic minority. Despite the categorization, ethnic minorities are not mentioned in the Electoral Code. It means that ethnic minority groups (Karaim, Lemko, Roma and Tatar) do not enjoy the privilege in the first place. It should be remembered that the Electoral Code itself should be aware of the existence of the ethnic minorities because of two reasons: (1) The present Electoral Code was established in 2011 after the Minority Act in 2005; (2) Article 459 of the Electoral Code uses the wording of “national or ethnic minorities.”⁵⁷ For these two reasons, it is highly likely that the Electoral Code purposely ignores the privilege

⁵⁶ This privilege for minorities in elections is determined in Article 197 of the Electoral Code (Dz. U. 2011 nr 21 poz. 112).

⁵⁷ The word “ethnic minority” appears in the section 4 of Article 459 of the Electoral Code. This Article determines the possibility of the integration of multiple counties (*powiat* in Polish) into one constituency in municipal parliament elections: “The integration of counties shall not violate the social bonds connecting voters belonging to national or ethnic minorities residing in the territory of the merged counties” (translation and emphasis are the author’s).

which can be enjoyed by ethnic minorities.

In the fourth opinion, ACFC mainly mentions democratic procedures such as citizens' projects, parliament's reform bill, and Poland's electoral system. Topics such as a bill of the Minority Act or minority representatives in parliament have appeared in the second or third opinions of ACFC, but not frequently. The increase in reference to democratic procedures is a new trend in the fourth opinion. Of course, the fourth opinion of ACFC also deals with topics frequently mentioned in previous monitoring cycles, such as the number of Silesians and linguistic status in points 21, 22, 27, 29, and 31. However, the proportion of these "familiar" topics has decreased compared with previous ACFC opinions.

In the fourth state comment (ACFC 2020),⁵⁸ Poland mentions the Silesian problem only in three points (point 20, 22, and 29). In these points, Poland denies the possibility of the idea of Silesians as an officially recognized minority, repeating "familiar" topics such as the Silesian identity, their linguistic affiliation, legal limitation of FCNM, and the judgment of ECHR in 2004. Newer topics such as citizens' projects, reform bills, or electoral systems are not mentioned in the fourth state opinion.

4. Conclusion

Poland signed FCNM in 1995, but its ratification took place finally in 2000. As for the European Charter for Regional or Minority Languages, which is one of the most important CoE criteria along with FCNM, Poland ratified it in 2009 after the establishment of the Minority Act (2005). In general, the democratized Poland has not been actively engaged in the minority problems in its territory. However, as for the Silesian problem, we could say that Poland has taken an active interest in it, by denying the existence of the problem itself. Such attitude of Poland is evident in the official documents of monitoring cycles of FCNM.

We explored the discussions between ACFC and Poland on the Silesian problem, referring to documents of the FCNM monitoring cycles. Fundamentally, contrasting positions have not changed for 20 years. Generally, ACFC has a positive attitude toward Silesians and demands more favorable measures from Poland; however, Poland's attitude toward the Silesian problem remains unchanged. Poland rejected any ideas that promoted the independence of Silesians, whether these pertained to identity, legal status, or language. The establishment of the Minority Act in 2005 is surely an important event, but the Act also did not solve the

⁵⁸ ACFC. *Comments of the Government of Poland on the Fourth Opinion of the Advisory Committee on the implementation of the Framework Convention for the Protection of National Minorities by Poland* (GVT/COM/IV(2020)002).

problem of the status of Silesians. On the contrary, the Act made the situation more complicated by introducing the concept of “regional language.” (See. 3.2.3.).

The discussions seem to take the form of circular arguments. The analysis in this study, however, revealed that the contents of the discussions have considerably changed from the first to the fourth monitoring cycle. In the first cycle (2002–2004), discussions on the Silesian problem were not as complicated as in later cycles. The Minority Act was not established at the time of the first cycle. For better or worse, the attitude of Poland toward minorities was unclear. The situation radically changed after the establishment of the Minority Act in 2005, because ACFC started asking Poland why the largest group with the will of legal recognition is ignored. For this reason, the legal status of Silesians became the main topic in the second cycle (2007–2012). The second opinion of ACFC mentioned the Silesian problem in nine points. Comparing the fact that only two points pertained to Silesians in the first opinion of ACFC, this increase should be remarkable. In the third monitoring cycle (2012–2015), the issue of linguistic status was added to the discussion, which was derived from the ambiguous definition of “regional language” in the Minority Act. Thus, in the case of Poland, the Minority Act complicated discussions about minorities.

In the fourth monitoring cycle (2017–2020), ACFC seems to have changed the main topic in negotiations with Poland. Thus far, the main topics of the Silesian problem were people’s identity as an ethnic group, legal status, and linguistic issues. These topics also appeared in the fourth monitoring cycle. In the fourth ACFC opinion, however, the topics of democratic procedures are most frequently mentioned, such as citizens’ projects, the reform bill proposed by parliamentarians, and the electoral system, which is disadvantageous for minorities. ACFC elaborated on these issues in the fourth opinion. As seen in Section 3.2.4, Poland did not respond to these new topics in the fourth state comment.

Based on the analysis, we conclude that ACFC has changed its “strategy” in negotiations with Poland in the fourth cycle. From the first to the third cycle, ACFC attempted to change the attitude of Poland mainly through the issues of identity and legal status. In the fourth cycle, these topics (identity and legal status) appear as before. As for the linguistic identity, the “Silesian language” is still treated as an important element for the recognition of Silesians in the fourth opinion of ACFC (point 21 and 22). The most significant change is, however, is that the topics on the democratic procedures (bills of the Minority Act, the electoral system) began constituting the core of discussions on the Silesian problem.

民族的少数者保護枠組条約のモニタリング・サイクルから見る ポーランドのシロンスク問題

— 第1サイクルから第4サイクルまでの包括的分析 —

貞包和寛

本論文の目的は、欧州評議会の民族的少数者保護枠組条約（以下「枠組条約」）のモニタリング文書において、ポーランドのシロンスク問題がどのように議論されてきたかを明らかにすることにある。1998年に欧州評議会で発効した枠組条約は、民族的少数者の権利保護に関する各国の取り組みをフォローするために、モニタリング制度を採用している。ポーランドも2000年の条約署名以来、これまでに4度のモニタリングに応じてきた。最新の第4次モニタリングは2020年10月に終了した。過去のモニタリングにおいて最も頻繁に議論されてきた問題のひとつが、ポーランド国内のシロンスク問題である。

シロンスク地方の住民の一部は、1990年代初頭より、民族的・言語的独立性を掲げて活発な政治活動を行ってきた。自らの帰属意識として「シロンスク人」を挙げる者も多く、2011年の国勢調査では国民のおよそ2%（約817,000人）が「シロンスク」の帰属を選択している。この事実にも拘らず、ポーランドは法的にシロンスク人のステータスに言及していない。また過去には2度、シロンスク・アイデンティティを標榜する市民団体が裁判所に公的団体としての登録を拒否された事例もある。こうした事例は欧州評議会も知るところであり、評議会は枠組条約モニタリングを通じて、シロンスク人のステータス付与を考慮するようポーランドに呼びかけてきた。これに対してポーランドは、枠組条約の拘束範囲などを理由に、シロンスク人の法的認知について否定的な回答を続けている。

本研究では、これまでの枠組条約モニタリング、特に第4次サイクルにおいて、シロンスク問題がどのように議論されたかをまとめる。第3次サイクルまでの議論はすでに先行研究にまとめられているが、最新の第4次サイクルについては未だ分析されていないためである。考察の結果、第4次サイクルでは、アイデンティティや政策的ステータスに関する議論がこれまでのサイクルより減少したことが判明した。同時に第4次サイクルでは、少数者保護に関する国内法、議会での議席配分、選挙制度など、民主的手続きに関する言及が増加したことも判明した。