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Parental Rights to Shape the Model and Curriculum in Public Schools in Poland

- **ABSTRACT:** *Parents' have constitutional rights to raise children in accordance with their self-beliefs and religious beliefs, and thus have an impact on their education. The legislature has created specific mechanisms for the influence of parents on public schools, including a model of education and classes. Unfortunately, the implementation of this right has encountered numerous problems. Therefore, it is necessary to analyze the applicable regulations and formulate postulates de lege ferenda.*
- **KEYWORDS:** parents, children, school, upbringing, education

1. Introduction

Guarantees regarding the title rights of parents to shape the model and curriculum in public schools in Poland have not been explicitly formulated in the current Constitution of the Republic of Poland, adopted on April 2, 1997.¹ These should be decoded from several constitutional provisions devoted to the guarantees of parents' rights to raise children in accordance with their own beliefs, as well as the broadly understood protection and care of public authorities over family and parenthood.²

1 Journal Of Laws No. 78, item 483 as amended.

2 This study is of a constitutional and legal nature. Lulek wrote about the perspective of theoretical and empirical determinants of the relationship between parents and teachers, i.e., parental obligations in the process of cooperation with teachers, the appearance of parents' co-decision at school, and initiating actions by parents, by Lulek, 2017, pp. 198–215. Contrarily, the perspective of the Catholic school was described synthetically by, inter alia, Krajczyński, 2006, pp. 99–117; Domaszek, 2009, pp. 305–320.

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Among the constitutionally confirmed freedoms and rights of an individual, from the point of view of these considerations, Article 48 of the Polish Constitution states that:

1. Parents shall have the right to rear their children in accordance with their convictions. Such upbringing shall respect the degree of maturity of a child, as well as his freedom of conscience and belief and also his convictions. 2. Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.

From the perspective of parents' right to shape the model and curriculum in public schools in Poland, Article 70 of the Polish Constitution, regarding the right to education, in paragraph 3 mentions:

Parents shall have the right to choose schools other than public for their children. Citizens and institutions shall have the right to establish primary and secondary schools and institutions of higher education and educational development institutions. The conditions for establishing and operating non-public schools, the participation of public authorities in their financing, as well as the principles of educational supervision of such schools and educational development institutions, shall be specified by statute.

Apart from the above-mentioned constitutional provisions, it is necessary to specify the general systemic principle, formulated after a long and stormy constitutional debate that:³ 'Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.'⁴ This provision was placed among the most important principles concerning the state system in chapter one of the Constitution. In this way, both the importance of the issue and the fundamental role of the family and parenthood in the functioning of the state were indicated, while simultaneously obliging its authorities to protect and care for it.

Obligations of the state to help raise children are also stipulated in Article 71 of the Polish Constitution, of which Par. 1 confirms:

The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances—particularly those with many

3 Work on the Constitution lasted in 1989–1997.

4 Art. 18 of the Polish Constitution.

children or a single parent—shall have the right to special assistance from public authorities.⁵

The aim of this study is to indicate how systemic solutions in the field of parents' right to moral and religious upbringing of children are implemented at the level of statutes and their implementing acts, after 25 years of the Polish Constitution being in existence. The dogmatic and legal analysis will consider the constitutional foundations in this regard and the resulting guarantees in terms of the organized (parents' council) and unorganized interaction of parents with schools and other institutions, as well as the latest legal tendencies in this area, reflecting the so-called education law policy. This scientific article has been written considering that its readers will be primarily non-Polish-speakers for whom the basic Polish legal solutions in this area may be unknown.

2. The constitutional foundations of the parents' right to moral and religious upbringing of their children

Moving on to indicating the most important elements of Article 48 of the Polish Constitution, it should be noted at the outset that Paragraph 1 sentence 1 of this provision guarantees parents 'have the right to rear their children in accordance with their own convictions.' In addition to this seemingly fundamental guarantee to parents, this provision contains equally important guarantees for children. The constitution-maker states, in the second sentence, that 'Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions.' Moreover—which unfortunately, is often omitted in the comments—since parents have the right to raise their children, children have the right to be brought up by their parents.⁶

The Polish legislators included Article 48 in the constitutional catalogue of personal freedoms and rights. The common feature of these freedoms and rights is that by their very nature they do not apply to other subjects of legal relations. Only selected aspects of the freedoms and rights set out in Article 45 Section 1, Article 50 sentence 2, and Article 51 section 1, 3, and 4 extend to certain categories of entities other than natural persons.⁷

5 Art. 71 sec. 1 of the Polish Constitution.

6 In comments on the status of an individual, attention is drawn to the right-obligation correlation. However, in the case of many freedoms and rights, there is one more correlation: law-law. Incidentally, it is worth asking what the correlation is in the case of the so-called "Abortion rights." The fundamental right to life is not mentioned then.

7 See Judgment of the Constitutional Tribunal of October 30, 2006, P 10/06, OTK-A 2006, No. 9, item 128.

Paragraph 2 of Article 48 of the constitution of the Republic of Poland protects the rights of children within the limits specified by statutes and on the basis of a court judgment. This results from the phrase: ‘Limitation or deprivation of parental rights may be effected only in the instances specified by statute and only on the basis of a final court judgment.’ Thus understood, parental rights—according to the Constitutional Tribunal—‘in the subjective sense have not been defined *expressis verbis*, although there is no doubt that they include the right to raise a child, as provided for in para. 1 of this provision.’⁸ The constitutional concept of “parental rights” should be distinguished from the concept of “parental law” in the meaning of the subject, which denotes a set of norms regulating the legal relations between parents and children. The term “parental law” in the material sense is equivalent to French *droit de filiation* and German *Kindschaftsrecht*.

The above-mentioned court judgment of April 28, 2003, shows that Article 48 Section 2 of the Polish Constitution protects existing rights. This is the meaning of the provision, referring to the deprivation and limitations of parental rights. ‘Celem tej normy jest więc zapewnienie ochrony konstytucyjnej praw rodziców przed dowolną, arbitralną ingerencją władzy publicznej.’

The purpose of this norm is therefore to ensure the protection of the constitutional rights of parents against any arbitrary interference of public authority. Therefore, the purpose of this provision is to ensure constitutional protection of parents’ rights against any arbitrary interference by public authorities. At the level of this provision, all regulations that provide for the application of supervisory measures over the exercise of parental authority⁹ can be assessed, not the very basics of shaping family relations, which is related to filiation issues.¹⁰

As indicated in the “Introduction” Paragraph 3 of Article 70 of the Constitution contains guarantees regarding the right to education, including the freedom for parents to choose schools other than public for their children and establish schools and educational institutions.

Contrarily, the constitutional norm contained in Article 71 of the Polish Constitution complements the general principle formulated in Article 18.¹¹ It orders the state to ‘conduct such a social and economic policy that takes into account the welfare of the family and grants families in a difficult financial and social situation the right to special assistance from public authorities.’¹² In this regard, the constitutional order for the state to consider the good of the family in its social and economic policy is a program norm addressed primarily to public

8 The judgment of the Constitutional Tribunal of April 28, 2003, K 18/02.

9 Art. 109 of Family and Guardianship Code.

10 The judgment of the Constitutional Tribunal of April 28, 2003, K 18/02.

11 See Judgment of the Constitutional Tribunal of May 8, 2001, P 15/00 and the judgment of May 4, 2004, K 08/03.

12 The judgment of the Constitutional Tribunal of May 18, 2005, K 16/04.

authorities.¹³ The beneficiaries of the assistance provided by the state are family members, as they are primarily entitled to be the subject of constitutional law. Financial assistance provided by public authorities cannot only apply to parts of families, which are separated on the basis of criteria inconsistent with Article 71 Section 1 of the Polish Constitution.

3. The role of the parents' council in the upbringing and education of children

Article 18 of the European Convention on Human Rights states that the state is obliged to ensure that parents are able to exercise their right to the moral and religious education of their children. The state, or more precisely its organs, have the task—in accordance with the principle of subsidiarity—to help parents in the implementation of their rights through guarantee and organizational activities.¹⁴ In line with the hierarchical structure of the legal system, the general constitutional and international legal obligations of the Republic of Poland, in this respect, are implemented at the level of acts and implementing acts thereto, that is, regulations. Among the legal acts of statutory rank, the Act of December 14, 2016 on Education Law is of fundamental importance in this respect.¹⁵ It specified, *inter alia*, the legal bases of activities and competences of parents' councils, which represent all parents of pupils. Under the current legal status, parents' councils are obligatory bodies, and because they represent all parents, they have the attributes of a real social body.¹⁶ Nevertheless, regarding this, the position of Mateusz Pilich should be shared, who stated that

the Polish education system is so centralized and constrained by standards, the implementation of which is supervised by a specialized state administration apparatus (education boards) and local government (managing bodies) that, realistically speaking, there is not much space for the “supervisory” and “ownership” role of parents.¹⁷

13 Judgment of the Constitutional Tribunal of September 18, 2006, SK 15/05, OTK-A 2006, No. 8, item 106. The fact that the constitutional norm has the character of a program norm, *inter alia* obliges the complainant to indicate in the complaint the arguments that would allow it to be assumed that this provision was violated by the challenged provision.

14 See Warchałowski, 2007, pp. 204–205.

15 Journal Of Laws of 2021, item 1082 as amended.

16 Balicki and Pyter, 2017. The rules of operation of parents' councils were changed by the Act of April 11, 2007 amending the act on the education system and some other acts (Journal of Laws No. 80, item 542). The fundamental change consisted in replacing the optional creation of parents' councils with their obligatory nature.

17 Pilich, 2021.

Thus, the change of the status of parents' councils from "optional" to "obligatory" has changed little in this respect, and the current education system still suffers from a deficit of active citizenship. Contrastingly, parents' councils play a difficult to overestimate role in building relationships between parents and teachers (more broadly, schools).¹⁸

Pursuant to Article 83 Section 2 of the Education Law, the composition of the Parents' Council has been relatively rigidly defined. In schools, parents' councils are joined by one representative of the branch councils, elected in secret elections by a meeting of parents of students of a given branch. In the case of institutions,¹⁹ at least seven representatives are selected in secret elections by parents of the students of a given facility. Moreover, in art schools, representatives in the number specified in the school statute are elected in secret elections by parents of students of a given school. The internal structure and work of the parents' council are defined in the regulations of the parents' council.²⁰ It is worth noting that the legislator does not indicate what should be included in the content of this normative act. This leads to a pluralism of solutions and concepts, although with Article 84 Section 6 of the Education Law, it may indirectly result from the fact that such a matter may be, for example, the principle of collecting and managing funds.

The parents' council, which represents all parents of pupils, 'may apply to the headmaster and other bodies of the school or facility, the body running the school or facility and the body exercising pedagogical supervision with motions and opinions on all matters related to the school or facility.'²¹ In this way, the legislator defines the filing and opinion-making powers of the parents' councils.

The second group consists of constitutive and opinion-making tasks. The following are the competences of the parents' council mentioned by the legislator: 1) adopting, in consultation with the pedagogical council, the educational and preventive program of the school or facility referred to in Article 26; 2) giving opinions on the program and schedule to improve the effectiveness of education or upbringing of the school or facility referred to in Article 56 Section 2; 3) giving opinions on the draft financial plan submitted by the school head.²²

It follows from the provisions of the Education Law that the participation of the parents' council in the management of a public school is legally binding, and its participation in the management of a public school is part of the possibility of taking co-responsibility for the education process within a specific educational unit.²³

18 See Lulek, 2016, p. 26.

19 In polish law *placówka*.

20 Art. 83 sec. 4 point 1 of the Education Law.

21 Art. 84 sec. 1 of the Educational Law.

22 Art. 84 sec. 2 of the Educational Law.

23 J. Pierzchała, *Social participation ...*, p. 463 et seq.

Of key importance, from the point of view of the subject of this study, is the educational and preventive program of the school or institution, which—in accordance with Article 26 of the Educational Law—includes educational content and activities aimed at students, as well as preventive content and activities aimed at students, teachers, and parents.²⁴ In the event of a disagreement between the parents' council and the teachers' council on this program, the program is determined by the headmaster of the school or facility in agreement with the pedagogical supervisory authority. Simultaneously, the program established by the headmaster of the school or facility is valid until it has been adopted by the parents' council in consultation with the teachers' council. This means that in the current legal framework, the substantive role of the parents' council has been strengthened, and thus indirectly, so has the role and rights of parents.²⁵

From a practical perspective, an interesting issue is fundraising through voluntary contributions from parents and other sources. Article 84 Section 6 and 7 of the Education Law stipulate that

in order to support the statutory activities of a school or facility, the parents' council may collect funds from voluntary contributions from parents and other sources. The rules of spending the parents' council funds are set out in the regulations referred to in Article 83 Section 4. The funds referred to in paragraph 6 may be kept on a separate bank account of the parents' council. Persons with a written authorization granted by the parents' council are entitled to open and liquidate this bank account and administer the funds in this account.

As noted in the comments, this provision

is unclear and even controversial. According to the ruling of the Provincial Administrative Court in Olsztyn, it is the school complex, not the parents' council, that is the VAT taxpayer. The parents' council cannot be considered an entity registered in the REGON system, as well as a taxpayer, because it cannot be considered an organizational unit.²⁶

24 See Art. 26 sec. 1 of the Educational Law. The next section of this article shows that the educational and preventive program is developed on the basis of the results of the annual diagnosis in terms of the developmental needs of students in the school environment, including protective and risk factors, with particular emphasis on the risks associated with the use of psychotropic substances, substitute agents and new psychoactive substances. See Art. 26 sec. 2 of the Educational Law.

25 Pilich, 2021.

26 Educational law. Commentary 2017, in this context, reference is made to the judgment of the Provincial Administrative Court of February 24, 2010, I SA / Ol 13/10, Legalis.

De lege ferenda, it should be postulated that the issue of collecting and spending funds by parents' councils be clarified, the more so as it has an interdisciplinary character, including, inter alia, public finance law.²⁷

Significant legal guarantees regarding the competence of the parents' council are also included in the regulation of the Minister of National Education of February 28, 2019, on the detailed organization of public schools and public kindergartens.²⁸

First, these concern the naming of the school, and Par. 2 clause 1 of the regulation states that: '1. The school is named by the school authority at the request of the school council, and in the absence of the school council at the joint request of the pedagogical council, parents' council and students' self-government.' In the absence of one of the indicated authorities, the following applies: 'In a school where the parents' council is not established, the name is given by the governing body at the joint request of the pedagogical council and the students' self-government.'²⁹ In turn, 'In a school where there is no student self-government, the name is given by the governing body at the joint request of the pedagogical council and the parents' council.'³⁰ Additionally, 'In a school where the parents' council and the students' council are not established, the name is given by the governing body at the request of the pedagogical council.'³¹ In the case of a kindergarten, the name is given by the body running the kindergarten at the request of the kindergarten council, and in the absence of a kindergarten council, at the joint request of the pedagogical council and the parents' council, as provided for in par. 2 clause 8 of the Detailed Organization Regulation.

The parents' council was also indicated in the ordinance as the co-deciding body with regard to the scheduling of breaks in the operation of the kindergarten,³² and as an opinion body on the education of students six days a week in a school providing vocational training or organizing practical vocational training outside the school.³³

The research carried out by B. Lulek shows that the framework for the activities of parents' councils outlined by the legislator allows for undertaking a wide range of activities 'based on cooperation with environmental entities, which will be conducive to combining school and out-of-school experiences of students.' As the author of the research points out, three types of environmental activities undertaken by the parents' council can be identified: 'A. 'From a healthy breakfast to a talent contest'—action and theme; B. Parental support activities; C. 'Plan and

27 A different position on this issue is presented, for example, by Z. Ofiarski. Cf. Ofiarski et al, 2010, pp. 24–25.

28 Journal Of Laws of 2019, item 502.

29 Para. 2 clause 2 of the Detailed Organization Regulation.

30 Para. 2 clause 3 of the Detailed Organization Regulation.

31 Para. 2 clause 4 of the Detailed Organization Regulation.

32 Para. 12 sec. 1 of the Detailed Organization Regulation.

33 Para. 21 sec. 3 of the Detailed Organization Ordinance.

creativity’—towards building an educational space.³⁴ The common features characterizing the activity of the surveyed parents’ councils include their ‘action’ and intervention character, rather than planned and systematic.³⁵

4. Parents’ cooperation with the school

Apart from the organized form of parents ‘influence on the upbringing and education process of children and adolescents in the form of parents’ councils, the regulations in force in Poland indicate specific rights of parents, which are an extension and specification of constitutional guarantees in this respect.

Among the executive acts regarding the Act on Educational Law, the Regulation of the Minister of National Education of February 14, 2017 should be mentioned, which covers the core curriculum for pre-school education and that for general education for primary schools, including students with moderate or severe intellectual disabilities, general education for the first-level industry schools, general education for a special schools preparing for work, and general education for post-secondary schools.³⁶

According to the regulation, the task of the kindergarten is, inter alia, ‘Collaboration with parents, various environments, organizations and institutions, recognized by parents as the source of essential values, to create conditions enabling the development of the child’s identity.’³⁷ In addition, the task of the kindergarten is, with the consent of the parents, to systematically supplement the ‘implemented educational content with new issues resulting from the emergence of changes and phenomena in the child’s environment essential for their safety and harmonious development.’³⁸

The minister responsible for education, specifying the conditions and manner of carrying out the tasks of the kindergarten, indicated, inter alia, that

Teachers systematically inform parents about the progress in their child’s development, encourage cooperation in the implementation of the pre-school education program and prepare a diagnosis of school maturity for those children who in the given year are supposed to start education at school.³⁹

34 Lulek, 2016, pp. 27–30.

35 See Ibid, p. 30.

36 Journal Of Laws of 2017, item 356 as amended.

37 Kindergarten tasks, point 12.

38 Kindergarten tasks, point 14.

39 Conditions and method of implementation of point 9.

Moreover, in relation to general education in primary school, indicating the importance of the project method for the development of a young person and their success in adult life, it was noted that the projects ‘allow the cooperation of the school with the local environment and the involvement of parents of students.’

The passage of regulations concerning the educational activity of the school should be considered extremely important from the point of view of the subject matter. It was emphasized that ‘The educational activity of the school is one of the basic goals of the state educational policy.’ The upbringing of the young generation is the task of the family and the school, which in its activities must take into account the will of parents, but also the state, whose duties include creating appropriate conditions for upbringing.⁴⁰ It is thus difficult to overestimate the indication of the family as the entity carrying out the task of upbringing in the first place. In this manner, the legislator confirmed both the constitutional guarantees in this respect and the provisions of the Education Law.

In the case of early childhood education (grades 1–3), the tasks of the school specified in the above-mentioned regulation include, inter alia, ‘Cooperation with parents, various environments, organizations and institutions, recognized by parents as the source of important values, to create conditions enabling the development of the child’s identity⁴¹ and

systematic supplementation, with the consent of parents, of the implemented educational content with new issues resulting from the emergence of changes and phenomena important for the child’s safety and harmonious development in the child’s environment. As can be seen from the above-mentioned provisions, they are similar to those relating to pre-school education.⁴²

The Minister emphasized the special role of parents in the upbringing and education in relation to the subject of education, which includes ‘Upbringing for family life.’ It was indicated that by carrying out classes on this subject, teachers support parents’ responsibilities.⁴³ Simultaneously, the tasks of the school in the field of

40 Regulation on the core curriculum.

41 The regulation on the core curriculum, education stage I: grades I-III.

42 The regulation on the core curriculum, education stage I: grades I-III.

43 The regulation states that ‘Teachers, by carrying out classes on education for family life, supporting parents’ duties in this respect, should aim at ensuring that students: 1) find an environment of comprehensive development at school; 2) are aware of the process of psychosexual development; 3) appreciate the value of the family and know its tasks; 4) recognize human dignity; 5) searching, discovering and striving to achieve life goals and values important for finding one’s own place in the family and in the world; 6) learn to respect the common good as the basis of social life; 6) developed an attitude of dialogue, the ability to listen to others and understand their views, were able to cooperate and co-create mature personal ties.’

education for family life include, *inter alia*, cooperation with parents regarding the upkeep of proper relations between them and the child.⁴⁴

For students with moderate or severe intellectual disabilities, ‘parents of the students have the right to participate in team meetings concerning their child and to carry out, if possible, parts of the individual educational and therapeutic program at home.’⁴⁵ As it results from Annex 3 to the regulation on the core curriculum, cooperation with the family of a student with a moderate or severe intellectual disability is necessary, and the inclusion of the family in the activities carried out at the school, as well as, if possible, the continuation of certain elements of this activity by parents at the pupil’s home and the joint implementation of priority goals in the education of their child. It is also assumed that parents will participate in consultations on the student’s functioning, and the school will support their efforts in working with the student—in accordance with the specificity of the family, its values, and cultivated tradition.

Additionally, it should be noted that teachers are obliged to inform parents about the effects of children’s education, especially about the level of achievement/progress of the student, in terms of specific language skills and artistic education.

The cooperation of parents and schools in various areas of task implementation, especially educational and educational tasks, is indicated in the regulation of the Minister of National Education of February 28, 2019, on the detailed organization of public schools and public kindergartens (hereinafter: the regulation on the detailed organization).⁴⁶

In accordance with paragraph 6 section 2 of the regulation on the detailed organization;

If a child attending a division of an integrated kindergarten or an integration section in a mainstream kindergarten, or a student attending an integration school section or an integration section in a mainstream school, obtains a special education certificate issued due to a disability during the school year, the headmaster kindergartens or schools may increase the number of children or students with disabilities in a given division, above the number specified in par. 1, but not more than by 2, with the consent of the leading authority and after consulting the parents of the children or students attending this department.

44 Similar to these general assumptions were found with regard to general education for the first-cycle industry school. Appendix No. 4. The core curriculum of general education to the 1st degree industry school.

45 Regulation on the core curriculum. Appendix No. 3. The core curriculum for general education for students with moderate or severe intellectual disability in primary schools.

46 Journal of Laws of 2019, item 502.

Cooperation in the implementation of the educational and preventive tasks of the boarding school have been articulated in paragraph 8 section 4 of this regulation.

Considering the proposals of parents of children of a given class, it is necessary for the head of the kindergarten to entrust the care to one or two teachers, depending on the working time of the ward and the tasks performed by it.⁴⁷ Moreover, the expectations of parents are one of the necessary elements (apart from the principles of health and hygiene of teaching; upbringing and care; the needs, interests, and talents of children; and the type of disability) with the framework schedule set by the headmaster at the request of the pedagogical council.⁴⁸

Furthermore, in the case of the establishment of a work-training unit in a primary school, with the consent of the parents, the head of the primary school

admits the student to the work-training unit, taking into account the opinion issued by a doctor and the opinion of a psychological and pedagogical counselling centre, including a specialist clinic from which it follows legitimacy of learning by a student in a unit preparing for work.⁴⁹

5. The implementation of the parents' right to bring up their children on the example of teaching religion and ethics in public schools

Articles 48 and 53 of the Constitution of the Republic of Poland of April 2, 1997, and international agreements in force for the Republic of Poland—including in particular the Concordat between the Holy See and the Republic of Poland signed in Warsaw on July 28, 1993⁵⁰—indicate that teaching religion in public schools is related to the natural positive right of parents to religious and moral education of their children and to the freedom of conscience and religion.⁵¹ Constitutional and statutory guarantees confirm that religion is equal to other subjects in public education. Moreover, the special position of religion in public education is that it is the only subject in public education whose status has been defined at the constitutional level. The grammatical interpretation of the cited constitutional provision indicates parents and children as entities entitled to teach religion in public schools and state bodies obliged to organize religious education in churches and other religious associations with a regulated legal situation at public schools.

47 Para. 12 sec. 2 of the Detailed Organization Regulation.

48 Para. 12 sec. 4 of the Detailed Organization Regulation.

49 Para. 16 sec. 2 of the Detailed Organization Regulation.

50 Journal Of Laws 1998, No. 51, item 318.

51 On the topic Shaping the legal position of religion as an object in public education, I wrote in the Book 'Religion and ethics in public education', cf. Krukowski, et. al, 2014, pp. 121–141.

From the constitutional guarantees regarding the teaching of religion to the Church or other religious association with a regulated legal situation, it is possible to recreate the general principle, which states, first of all, that religion ‘may be taught at school.’⁵² As A. Mezglewski rightly pointed out, ‘Since the study of religion is a subject of education, it is the same subject as any other subject. Any other interpretation would imply unlawful discrimination.’⁵³ Thus, the constitution-maker adopted the principle of equal treatment of religion as a school subject. *A contrario*, potential differences in the status of religion as an object in public education should result only from its specificity.⁵⁴

Consequently, teaching religion in public schools is mentioned in the Concordat between the Holy See and the Republic of Poland, which was signed on July 28, 1993, four years before the adoption of the Constitution of the Republic of Poland. In Article 12 Section 1, contracting parties stated:

Recognizing the parents’ right to religious upbringing of children and the principle of tolerance, the State guarantees that public primary and secondary schools and kindergartens, run by state and local administration bodies, organize, in accordance with the will of those interested, religion lessons within the school and kindergarten schedule.⁵⁵

Thus, the following principles follow from the provisions of the Concordat: recognition of the parents’ right to religious education of children; teaching religion in schools in accordance with the will of those interested; covering with the guarantee of religious education kindergartens and primary and secondary schools run by state and local administration bodies; and the separation of the powers of the state and church authorities regarding attitudes to religious education, programs, and teachers.⁵⁶ These principles, due to the nature of the concordat agreement, apply to members of the Catholic Church; however, the constitutional principle of equality and equality of churches and other religious associations obliges the

52 On the rigor of teaching religion in public schools Zieliński, 2009, pp. 508–511. It is difficult to agree with his position that the indifference of the educational authorities to the situation of a minority group who was not provided with adequate school activities during religion lessons is ‘a notorious offense to the key constitutional value, which is freedom of conscience and religion’. Rather, it is to be thought that this is the ineptitude of the legislator, which for many years has failed to provide adequate guarantees.

53 Mezglewski, 2009, p. 79.

54 *Ibid.*

55 It is worth noting that the provisions of the Concordat do not impose quantitative restrictions on the organization of religion lessons. The educational institution is obliged to organize a religion lesson regardless of the number of interested students. Meanwhile, § 2 para. 1 and 2 of the Regulation of the Minister of National Education of April 14, 1992, introduces such limitations, which may be assessed as inconsistent with Art. 12 sec. 1 of the Concordat. He wrote more on this subject, among others Borecki, 2008a, p. 67.

56 Krukowski, 1995, pp. 196–197; Góralski and Pieńdyk, 2000, pp. 37–41.

competent organs of public authority to extend it to members and other religious entities interested in teaching religion in public schools.⁵⁷

In the Act of September 7, 1991 on the Education System⁵⁸ the issue of teaching religion was devoted to Article 12 from which it follows that

1. Public kindergartens and primary schools organize religious education at the request of parents, public secondary schools at the request of either parents or pupils themselves; after reaching the age of majority, students decide to study religion. 2. The minister responsible for education, in consultation with the authorities of the Catholic Church and the Polish Autocephalous Orthodox Church and other churches and religious associations, determines, by way of an ordinance, the conditions and manner of performing the tasks referred to in para. 1.

Article 12 Section 2 of the Act on the Education System contains a delegation to determine, by means of an ordinance, the conditions and manner of performing the tasks provided for in the act by schools. Moreover, regarding teaching religion, the legislator obliged the minister in charge of education and upbringing to act in consultation with the authorities of churches and other religious associations when issuing an ordinance that would define the conditions and manner of performing tasks by schools resulting from the organization of teaching religion. On the basis of this act, the Minister of National Education issued an ordinance of April 14, 1992 on the conditions and manner of organizing religious education in public kindergartens and schools.⁵⁹ It specifies, in accordance with the title, the conditions and methods of organizing religious education in public kindergartens and schools, including the rights of students and their parents (§ 1), the obligations of kindergartens and schools (§ 2–3), issues relating to curricula (§ 4), the status of religious teachers (§ 5–7), the weekly number of teaching hours (§ 8), grades in religion or ethics (§ 9), exemption from school for the purpose of Lenten retreats (§ 10), and visiting and pedagogical supervision over teaching religion and ethics (§ 11). The regulation also allows for the possibility of placing the cross in school rooms and saying prayers before and after classes (§ 12).⁶⁰

57 It was written on this subject, among others by Krukowski, 1996, p. 41.

58 Journal Of Laws 2004, No. 256, item 2572 as amended.

59 Journal Of Laws No. 36, item 155 as amended.

60 The regulation of the Minister of National Education of April 14, 1992 was the subject of the judgment of the Constitutional Tribunal of April 20, 1993, file ref. act U 12/92. He considers that the legitimate and possible subsequent analysis of the constitutionality of some provisions of the regulation is, among others, P. Borecki, arguing this with new control models, which are the norms of the Constitution of the Republic of Poland of April 2, 1997 and the Concordat between the Holy See and the Republic of Poland of July 28, 1993. He indicates the necessity to review § 1 para. 2, § 2 sec. 1-2, § 3 sec. 2 in connection with § 2, § 6, § 10 sec. 1 and § 12 sentence 1 of the regulation. Borecki, 2008b, pp. 31–40.

Article 12 Section 1 of the Act of September 7, 1991, on the education system, states that religious education is organized by kindergartens and primary schools that have the status of public schools, that is, they are universal schools.⁶¹ *A contrario*, in the case of non-public schools, religious education can be freely decided by the body running the school, which in practice means that non-public schools may be denominational schools, that is, those with obligatory religious formation of pupils, as well as secular ones in which religion will not be taught.⁶² The entities authorized to teach religion in public kindergartens and schools are students and parents, on whose request such education is organized.⁶³ In this way, on the statutory level, freedom of thought, conscience, and religion are realized, as well as the parents' right to moral and religious upbringing of their children, guaranteed both in the acts of international law and in the provisions of the Polish constitution.⁶⁴ Therefore, the Polish model of religious education in public schools is described as optional.⁶⁵

It should be noted, however, that in terms of the organization of religious education, gradual changes are planned, aimed at introducing an alternative to the students' choice to study religion or ethics, which means that there will be—as before—the third option, that is, a situation where the student does not take part in religion or ethics classes. The Ministry of Education and Science intends to spread this change out over several years, and its implementation will begin on September 1, 2023.⁶⁶

The Minister of National Education, implementing the instruction set out in Article 12 Section 2 of the Act on the Education System,⁶⁷ issued the ordinance of April 14, 1992, on the conditions and methods of organizing religious education in

61 Art. 12 sec. 1 of the act on the education system: 'Public kindergartens, primary schools and lower secondary schools organize religious education at the request of parents, public upper secondary schools at the request of either parents or students themselves; after reaching the age of majority, students decide to study religion.'

62 See Król, Kuzior, and Łyszczarz, 2009, p. 129; Pilich, 2009, p. 205.

63 It is worth noting that in Art. 12 sec. 1, next to the wording concerning the "wishes" of parents or parents or the students themselves, there is also the wording concerning "making decision" by the students themselves, after reaching the age of majority, about receiving religious education. This discrepancy was negatively assessed, among others, by Pilich, 2009, p. 211.

64 See Sokołowski, 1999, p. 262.

65 For example, in the works of Warchałowski, 2004.

66 The process of implementing the new solutions has been planned for the years 2023–2027 and is to cover gradual individual classes of students, starting from grades IV of primary schools and grades I of post-primary schools of all types September 1, 2023 [Online]. Available at: <https://www.prawo.pl/oswiata/obowiazkowa-religia-lub-etyka-mein,513521.html> (Accessed: 12 August 2022).

67 Art. 12 sec. 2: 'The minister competent for education, in consultation with the authorities of the Catholic Church and the Polish Autocephalous Orthodox Church, and other churches and religious associations, determines, by regulation, the conditions and manner of performing the tasks referred to in para. 1.'

public kindergartens and schools.⁶⁸ In it, he specified, *inter alia*, the school's obligation to organize religious lessons if there are at least seven students of a given religion in the class. In the case of a smaller number, classes can be organized into inter-class and inter-department groups. If the number of students of a given denomination does not reach the designated minimum of seven people, then the body running the kindergarten or school, in consultation with the parents and the relevant Church or other religious association, organizes religious instruction in an interschool group or in an out-of-school catechetical study. In this case, the number of students should not be less than three.⁶⁹

The introduction by the Minister of National Education, by way of an ordinance, of quantitative restrictions on the organization of religious lessons for a given religious association makes it difficult—especially for parents belonging to the so-called minority churches and other religious associations—the implementation of their right to moral and religious education of children. This is pointed out by the Court of Human Rights in Strasbourg, the Ombudsman, and the doctrine⁷⁰ and Government Plenipotentiary for Equal Treatment. In the judgment *Grzelak v. Poland*, the Tribunal admonished the authorities of the Republic of Poland that they did not fulfill the obligations imposed on them in this regard.⁷¹ T. J. Zieliński even formulated the view that the indifference of the educational authorities to the situation of a minority group that was not provided with adequate school activities during religious lessons is ‘a notorious offense to the key constitutional value, which is freedom of conscience and religion.’⁷² In my opinion, it is rather due to the ineptitude of the legislator, who for many years has not created adequate guarantees; the problem of financial resources allocated to education; and the ‘powerlessness’ of school authorities.

According to international and constitutional guarantees, parents have the possibility of exercising their rights and obligations regarding religious and moral education of their children through the freedom to choose schools, which may be achieved by the right to establish their own schools or send their children to public and private schools.⁷³ Due to the demographic decline and migration from rural areas and small towns to large urban centers, this right encounters increasingly

68 See Journal of Laws of 1992, No. 36, item 155; d. Journal Of Laws of 1993, No. 83, item 390.

69 See Regulation on the conditions and methods, § 2.

70 Although the regulation was subject to review by the Constitutional Tribunal (the judgment of the Constitutional Tribunal of April 20, 1993, reference number U 12/92), P. Borecki, due to the possibility of applying new benchmarks of control, such as the norms of the Constitution of the Republic of Poland of April 2, 1997 and the Concordat between the Holy See and the Republic of Poland of July 28, 1993, indicates the need to control parish 1 clause 2, par. 2 sec. 1–2, par. 3 sec. 2 in connection with par. 2, par. 6, par. 10 sec. 1 and par. 12 sentence 1 of the regulation. Borecki, 2008b, pp. 31–40.

71 See, for example, Łački, 2011, pp. 194–204.

72 Zieliński, 2009, pp. 508–511.

73 See Declaration on Christian Education *Gravissimum educationis*, No. 6, 7 in Second Vatican Council, Constitutions, Decrees, Declarations, Polish Text. New translation, Poznań 2002.

serious obstacles. In the situation of liquidation of public schools in rural areas, dismissal of teachers, or reduction of expenses for extracurricular activities, it is difficult to implement such demands.

6. Proposing new legal solutions regarding the influence of parents on the activities of associations and other organizations in schools and institutions

In the last few years, legislative attempts have been made to strengthen parents' influence on school activities. This was the direction of, among others, the government bill amending the Act, that is, the Education Law and certain other acts.⁷⁴ *In genere*, the project concerned strengthening the role of the pedagogical supervision authority, in particular the educational superintendent.⁷⁵

In the draft, which was submitted to the Sejm on November 30, 2021,⁷⁶ there was a provision according to which

associations and other organizations whose statutory purpose is to educate or expand and enrich the forms of teaching, educational, care, and innovative activities of a school or facility. Pursuant to the draft act, the headmaster of the school or institution will be required to obtain a positive opinion from the education superintendent, and in the case of an art school and institution, and the institution referred to in Article 2 point 8 of the Act of December 14, 2016. – Educational law, for students of art schools – a specialized supervision unit referred to in Article 53 Section 1 of this Act, before the start of classes and provide the parents of the student or an adult student with information about the objectives and content of the curriculum,

74 See The Sejm of the Republic of Poland, 9th Term of Office, Print no. 458, The draft act on the amendment to the Act – Education Law presented by the President.

75 According to the draft, 'Positive opinions of the curator will be required, inter alia, in the case when the authority managing the school or facility appoints a person who is not a teacher for the position of the headmaster of the school or facility; in a situation where, in justified cases, the authority managing the school or facility wants to entrust the position of the headmaster of the school or facility for a period shorter than 5 school years, but not shorter than one school year; in a situation where the competition for the position of the director has not been resolved; in a situation where the body which entrusted the teacher with a managerial position in a school or institution, wishes to recall the teacher from this position during the school year without notice in particularly justified cases; in order to enable the functioning of an association or other organization on the premises of the school or institution providing for conducting classes with students.' Karolczak, 2021.

76 Rządowy projekt ustawy o zmianie ustawy – Prawo oświatowe oraz niektórych innych ustaw [Online]. Available at: <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=1812> (Accessed: 9 August 2022).

a positive opinion of the school superintendent and positive opinions of the school board or institution and parents' council, and at the request of a parent or an adult student – also materials used for implementation program of activities.⁷⁷

In the opinion of the project promoter, this procedure aims to increase the awareness of students and parents about the content of the proposed programs. The parent should have the right to decide on the child's participation in the classes, as well as to obtain information, e.g., on the professional experience, competences and skills of the teachers, in the scope covered by the classes [underlined by P.S.].⁷⁸ The project initiator assumed that in the case of organizing and conducting classes as part of the tasks commissioned in the field of government administration, the opinions of the body exercising pedagogical supervision will not be required.

It is worth noting that the indicated proposed regulations did not decide whether the consent of one of the parents or both would suffice. Moreover, it is unclear what happens if the views of a child's parents are divergent.

Ultimately, as a result of legislative work, in Article 86 of the Education Law Act, after paragraph 2, the legislator added sections 2a–2g. Of key importance here is Paragraph 2a. that states:

If the agreed conditions of activity referred to in Section 2 provide for the conduct of classes with students, the organization and conduct of these classes require a positive opinion of the education superintendent, and in the case of art schools and institutions, and the facility referred to in Article 1. 2, paragraph 8, for students of art schools – a specialized supervision unit, referred to in Article 1. 53 Section 1, concerning the compliance of the program of these classes with the provisions of law, in particular with the tasks listed in Article 1 points 1-3, 5, 14 and 21.⁷⁹

The act did not enter into force because pursuant to Article 122 Section 5 of the Constitution of the Republic of Poland, the President of the Republic of Poland forwarded the bill to the Sejm with a motivated request for reconsideration.⁸⁰

77 Justification, p. 6.

78 Justification, p. 6.

79 Act amending the Act – Education Law [Online]. Available at: <https://www.sejm.gov.pl/sejm9.nsf/PrzebiegProc.xsp?nr=1812> (Accessed: 9 August 2022).

80 The President of the Republic of Poland, at the meeting of the National Security Council on March 2, 2022, said, inter alia: 'You – representatives of the opposition and various circles – appealed to me for a veto to the Education Law. And because I am appealing to you for unity, for the lack of political disputes, I have decided to refer this law for reconsideration.' [Online]. Available at: <https://www.prezydent.pl/prawo/zawetowane/prezydent-wetuje-nowelizacje-prawa-oswiatowego,%2049737> (Accessed: 9 August 2022).

The President's veto did not complete the legislative process required to introduce this amendment to the Educational Law, as the Sejm did not use the procedure of re-enacting the law by a majority of 3/5 votes in the presence of at least half of the statutory number of deputies until August 2022.⁸¹ Moreover, on July 3, 2020, a draft act amending the Education Law, presented by the President of the Republic of Poland, was submitted to the Sejm.⁸² The aim of the proposed changes is

to provide all parents with the possibility to co-decide on the types, content, and methods of conducting additional classes organized in schools or educational institutions attended by their children, by associations and other organizations whose statutory purpose is educational activity or expanding and enriching forms of education. didactic, educational, caring, and innovative activities of the school or institution.⁸³

As a result of the justification of the project,

The proposed regulation introduces a solution that allows parents to have a real influence on the shape and the very fact of organizing extra-curricular activities. In this way, it realizes the parents' right to raise a child in accordance with their own convictions, as expressed in Article 48 Section 1 sentence of the Constitution of the Republic of Poland.⁸⁴

The draft act on the amendment to the Education Law presented by the President of the Republic of Poland was referred to the first reading in committees, that is, the Education, Science and Youth Committee. For two years, it is being processed at the same stage.⁸⁵ The main assumption is that the project—as in the case of the law vetoed by the President of the Republic of Poland—is going to provide all parents with the possibility of co-deciding on the types of content and the way of conducting additional activities organized in schools or educational institutions attended by their children. This will be achieved by associations and other organizations whose statutory goal is educational activity or expanding and enriching the forms of teaching, educational, care, and innovative activities of a school or institution.

81 Art. 122 sec. 5 of the Polish Constitution.

82 The Sejm of the 9th term of office, Print No. 458 [Online]. Available at: <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=458> (Accessed: 10 August 2022).

83 Print no 458, Justification [Online]. Available at: <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=458> (Accessed: 10 August 2022).

84 Print no 458, Justification [Online]. Available at: <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=458> (Accessed: 10 August 2022).

85 The course of the legislative process [Online]. Available at: <https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?nr=458> (Accessed: 10 August 2022).

7. Summary

The framework of this study allowed for a dogmatic and legal analysis of only some legal provisions related to the title subject matter. Nevertheless, they allow for the formulation of several conclusions, and even *de lege ferenda* postulates, more so as the process of changes in Polish education has been ongoing for over 30 years (since 1991), and the constitutional provisions indicated in the article have been in force for 25 years (since 1997).

An analysis of the educational regulations in force in Poland, also in the field of parents' rights, may—at first glance—lead to the conclusion that public authorities perceive the need for cooperation between schools and parents in creating and implementing the so-called 'School educational and educative program.' Such a program must consider the needs of parents in terms of raising their children. Parents should be involved in building the educational program; they should also have the opportunity to express their opinions on the plan proposed by the school, as well as express their opinions on what content they accept or would like to implement.

Although the existence of parents' councils in certain types of schools and institutions is now compulsory, empirical studies confirm that it is extremely important and desirable that the councils should be more active, so that the 'parenting factor' would have a greater impact on what happens in schools and around them. Through such councils, parents can participate in the current and long-term programming of the school's work, help in the improvement of the organization and conditions, and participate in the implementation of teaching and education programs and school care tasks, by organizing activities aimed at improving the pedagogical culture in the family, school, and local environment.⁸⁶

Parental activity in areas indicated by laws and regulations is extremely desirable. Certainly, legal regulations will not solve all contemporary educational, social, and upbringing problems, but the constant and increasing activity of parents is a *sine qua non* condition for the efficient operation of schools. Public institutions—at the state and local government levels—will not replace parents in exercising their right to upbringing their children, or controlling activities with regard to the process of upbringing and education. Public authorities, as entities are obliged to help parents, and should not impose a specific education system, contrary to their moral and religious convictions. Therefore, a manifestation of respect for parents' right to religious and moral education of children is the refraining of public authorities from forcing their children to attend school classes that do not correspond to the religious beliefs of their parents. The increasing activity of non-governmental organizations in proposing different programs that

⁸⁶ See Król and Pielachowski, 1992, p. 65.

are sometimes questionable in terms of quality and content should be legally regulated, with respect to the fundamental role of parents in the upbringing process. Therefore, despite some legislative weaknesses, the amendments to the Education Law presented in this study by the Council of Ministers and the President of the Republic of Poland, which unfortunately have not been finalized in the form of the enactment of the act, should be positively assessed.

Fortunately, in Poland, actions inconsistent with the idea of respecting the freedom of conscience and religion of parents and children by imposing one model of upbringing that completely excludes religious formation are not yet present.⁸⁷ Nevertheless, changes regarding the political scene, despite general constitutional and international guarantees in this respect, may result in an increasing role of public authorities and schools in creating a model of upbringing at the expense of parents. One reason for this is the relatively low social activity of this group of citizens.

87 See Declaration on Religious Freedom *Dignitatis Humanae*, No. 5 in Second Vatican Council, Constitutions, Decrees, Declarations, Polish Text. New translation, Poznań 2002.

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