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Author: Natalia Stępień-Lampa

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Natalia Stępień-Lampa¹

(Un)equal Access to Education. Between the Idea and the School Reality in Poland

Keywords: right to education, equal access to education, reform of the education system

Słowa kluczowe: prawo do nauki, równy dostęp do wykształcenia, reforma systemu oświaty

Abstract

The paper deals with the issues related to the right to education under the Constitution of the Republic of Poland of 1997 and to the actual operation of the education system. The main focus is on the constitutional guarantee of equal access to education. This guarantee should be treated as Kant's Regulatory Idea which should be pursued by public authority though its full attainment is not possible in social reality. This study attempts to indicate to what extent the state's obligation to ensure equal access to education is implemented by the institution of the school in Poland.

Streszczenie

(Nie)równy dostęp do wykształcenia. Pomiędzy ideą a rzeczywistością szkolną w Polsce

Artykuł obejmuje rozważania dotyczące problematyki związanej z prawem do nauki na gruncie Konstytucji Rzeczypospolitej Polskiej z 1997 roku oraz w praktyce funkcjonowania systemu oświaty. Szczególną uwagę poświęcono konstytucyjnej gwarancji równego dostępu do wykształcenia. Gwarancję tę należy traktować jako Kantowską ideę regu-

¹ ORCID ID: 0000-0001-6282-5655, PhD, Institute of Political Sciences, Faculty of Social Sciences, University of Silesia in Katowice. E-mail: natalia.stepien-lampa@us.edu.pl.

latywną, do której władza publiczna powinna dążyć, ale której pełne osiągnięcie nie jest możliwe w rzeczywistości społecznej. Celem niniejszego opracowania jest próba wskazania, w jak dużym stopniu instytucja szkoły w Polsce realizuje ciężące na państwie zobowiązanie zapewnienia równego dostępu do wykształcenia.



I. The Right to Education in the Constitution of the Republic of Poland

The right to education is one of the fundamental rights attached to the individual. Like all human rights, it has a universal, inherent, inviolable and inherent character. Internationally, the right to education was guaranteed for the first time in the Art. 26 of the Universal Declaration of Human Rights of 10 December 1948². In Poland, however, these rights had been codified much earlier, as in the Constitution of 17 March 1921 (the so-called March Constitution)³. The current Constitution regulates this issue in Art. 70⁴.

The right to education in the Constitution of 2 April 1997 was included in the catalog of freedoms and economic, social, and cultural rights. This way, the constitution-maker, as it were, confirmed the fact that it is one of the rights of second generation of human rights. In addition, according to the constitutionalist, Wiesław Skrzydło, this right is the most important in this group⁵. This thesis seems to be supported by the Constitutional Tribunal in the reasoning to one of its judgments, according to which “the right to education

² Thus, the United Nations has set out in the Declaration a certain minimum scope of the right to education – providing it to everyone and making it clear that learning is free at least at the basic level. In addition, Art. 26 also includes the obligation to learn (at the basic level), as well as a guarantee of universal access to technical and vocational education, and access to higher education on an equal basis. UN General Assembly Resolution 217 A (III) of 10 December 1948.

³ The March Constitution deals with this matter in several articles, including above all in Art. 118 and 119, Act of 17 March 1921 – the Constitution of the Republic of Poland (Dz.U. No. 44, item 267).

⁴ The Constitution of the Republic of Poland of 2 April 1997 (Dz.U. No. 78, item 483 as amended).

⁵ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2009, pp. 75–77.

belongs to the fundamental rights of the individual in modern society. This right must be perceived in terms of both the good and the individual value as well as an important basic social good. The fulfilment of the right to education is not so much a special privilege of modern individuals, but it is an indispensable condition for the development of society and, at the same time, the full participation of the individual in social life⁶. The Tribunal pointed out another important aspect of the right to education, namely its dual – individual and social – nature. This means that, on the one hand, it has an individual dimension, but on the other, its provision is associated with positive effects for the whole of society. Further the reasoning, the Constitutional Tribunal states that “Universal education has become the most important engine of economic and civilization development in the modern world. In Europe, the greatest achievements of the second half of the twentieth century include the universality of secondary and tertiary education, which is expressed in a constantly increasing degree of enrolment rate⁷”. Thus, the Tribunal also highlighted the major importance of the right to education.

The concept of the right to education adopted in the Constitution has all the characteristics of freedom and thus serves the private interests of the individual. The individual has the possibility of acquiring knowledge, almost unencumbered, thereby of self-realization. Nevertheless, the clear trend in the modern welfare state to undertake wider activity in the field of public tasks implies a greater pressure of the state authorities on the furtherance of the general interest. The state by acting in the general interest indirectly meets the private one. We can observe this awareness from the perspective of the century of Polish independence, but it will also determine the way of thinking about the education system in the future⁸. The public authority attributes the responsibility for education through the constitutional guarantee of the right to education and this fact imposes on the authority the obligation not only to organize education but also to ensure the quality of education.

⁶ Judgment of the Constitutional Tribunal of 8 November 2000, with the reference SK. 18/99.

⁷ Ibidem.

⁸ Ł. Kierznowski, *Historia prawa do nauki w polskich konstytucjach*, “Miscellanea Historico-Iuridica” 2017, vol. XVI, No. 2, pp. 171–172.

Pursuant to Art. 70, the right to education in the Polish Constitution has been guaranteed to everyone, which means that it does not only cover children and young people, it has also been assigned to adults. However, in the case of minors, it takes the form of a duty – learning is compulsory⁹. In order to ensure full implementation of the right to education, the Constitution introduces the principle of free education in public schools. At the same time, the choice and establishment of non-public institutions was allowed. State's assumed obligation to ensure universal and equal access to education in the Fundamental Law is also extremely important. This task of public authority seems to have all the characteristics of Kant's Regulatory Idea, sought to be implemented by the state but which cannot be fully achieved.

II. Education Inequalities

The guarantee of complete equality in access to education by public authorities is not achievable. This means that, in every country, a phenomenon of education inequality exists. Generally, these inequalities can be defined as different access of individuals or entire social groups to educational goods¹⁰. The extent of education inequalities depends on the form of analyzing this phenomenon. A widely accepted method of characterizing inequalities in education is to seek the correlation between the social origin and the level of education obtained. The social origin is most often understood as a socio-economic status¹¹. In turn, the level of education obtained means not only the actually

⁹ In connection with the wording of Art. 70, there is some doubt as to whether the right to education should really be classified as a social law or as a libertarian law, i.e. one that prohibits the state from taking actions that violate freedom of choice. It should rather be considered a social right of positive nature, therefore consisting in the possibility of demanding from the state to act – in this case universal, equal and free access to education. According to Sylwia Jarosz-Żukowska and Łukasz Żukowski, until the age of majority is reached in the light of the Constitution, it adopts the character of positive social law, but later becomes a libertarian law (freedom of education). S. Jarosz-Żukowska, Ł. Żukowski, *Prawo do nauki i jego gwarancje*, [in:] *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, ed. M. Jabłoński, Wrocław 2014, p. 637.

¹⁰ R. Dolata, *Szkola – segregacje – nierówności*, Warsaw, 2014, p. 15.

¹¹ In order to analyze the extent of educational inequalities beyond the level of education, the cultural capital (which, for example, can be measured by the number of books at home) or

completed stage of education, but also the chances of studying at the university, the number of years of study, the results obtained in competence tests. Considering the relationship of these two variables, the ideal state, and therefore the lack of education inequalities, comes down to a situation in which the level of education does not depend on the social origin.

The given method of pinpointing education inequalities does not fully reflect their nature. Today, obtaining higher education is much more accessible than it was a few decades ago. In Poland, almost half of the young people from each subsequent age group begin higher education, which in turn reduces the differences between various categories of students. Concurrently, there is an increase in the sense of disproportion between higher education institutions and the degree courses they offer. Therefore, the chosen degree course and prestige of the university are becoming increasingly important. All of this means that people who experience education inequalities may have a sense of increased opportunities due to the fact that a larger percentage of them take up higher education. However, when we compare their situation with the fact of higher probability of obtaining tertiary education, it turns out that education inequalities have comparatively increased. Moreover, the currently common instrumental use of education, according to which obtained knowledge and diploma are to guarantee a good position on the labor market and high earnings, can also fuel the perception of inequality. On the one hand, access to education for certain groups of the population is greater, but on the other, their position on the labor market shows no signs of improvement¹².

III. The School Reality

In order to counteract education inequalities and thus ensure equal access to education, the state has a list of measures in the field of social policy. Among them, it is important to point out social assistance of a kind, the provision of which was regulated in the Act of 7 September 1991 on the Educa-

the economic capital (property status) of the individual often are considered.

¹² I. Białecki, *Nierówności edukacyjne: selekcje szkolnie i polityka wyrównywania szans*, [in:] *Wyrównywanie szans edukacyjnych – narzędzia finansowe*, eds. J. Dietel, Z. Sapijaszka, Łódź 2010, pp. 9–11.

tion System¹³. This assistance includes a scholarship and school allowance. A school scholarship may be awarded to a student in a difficult life situation resulting from low income per person in the family. It is granted to students whose household income criterion satisfies the condition formulated in the Act of 12 March 2004 on social assistance¹⁴. School allowance is a special form of social assistance. It can be used by students who are temporarily in a difficult life situation as a result of a fortuitous event. School allowance may be granted in the form of a cash benefit to cover expenses related to the education process or in the form of educational assistance in kind, once or several times a year, irrespective of the school scholarship received.

A form of support aimed at ensuring equal access to education for people with disabilities is assistance under the government's 'School kit' programme. This is a one-time benefit related to the start of the school year and its amount depends on the type of disability. Detailed issues related to the school kit are set forth each year by a relevant regulation¹⁵.

The measures characterized are designed to enable students in a particular situation (poverty, fortuitous events, disability) to fully participate in the education system. However, it is obvious that their operation is limited and largely depends on the way a parent spends the funds received.

Education inequalities are manifested at every level of education. Beginning with compulsory pre-school preparation (the so-called zero class) through primary and secondary school to universities. The institution of the school in Poland seems to be in a big crisis, the sources of which can be sought in permanent changes in the education system and thus making education one of the areas of political dispute. Meanwhile, subsequent reforms and disputes over the shape of the school system do not solve real problems of education, they only deepen them.

Currently, a structural reform is being carried out in the Polish school, which was initiated by adopting the Education Law Act on 14 December 2016.

¹³ Dz.U. 2019, item 1481 as amended.

¹⁴ Dz.U. 2019, item 1507 as amended.

¹⁵ In the 2019/2020 school year, this form of support is provided under the Regulation of the Council of Ministers of 4 July 2019 on the detailed conditions for providing financial assistance to students for the purchase of textbooks and educational materials (Dz.U. 2019, item 1342).

Once the reform process is completed, the education system will be determined by: eight-year primary schools, four-year general secondary schools, five-year technical secondary school, three-year first-degree industry schools, two-year second-degree industry schools, post-secondary schools. The assumptions of the change are implemented gradually – on 1 September 2017, pupils of a six-year primary school became pupils of an eight-year school, and graduates of Class VI started education in Class VII. At the same time, it was then that the termination of lower secondary schools began, and basic vocational schools evolved into three-year first-degree industry schools (two-year second-degree industry schools will be launched on 1 September 2020). The reform will end in 2023 because this is when the last year of lower secondary school graduates will complete four-year technical schools¹⁶.

The 2016 education reform causes many problems for students, their parents, teachers and local government officials. It is obvious that the reform also generates costs which those who initiated this change consciously agree to bear in the name of guaranteeing, in their opinion, better quality of education in the future. Financing, including this case, has become a bone of contention between the local government and the central authority. In May 2019, local governments from the ten largest cities associated in the Union of Polish Metropolises called on the Ministry of Finance to return PLN 103 million, which these cities had to spend due to structural changes in education in 2017 only. For this amount – in their opinion – the expenses they incurred exceeded the funds provided by the Ministry of National Education for implementing education reform. According to the Ministry of National Education, these claims were unjustified¹⁷. Decision making on the shape of the local school network was also problematic for local government units. As contained in the reform assumptions, local government authorities were obliged to adopt resolutions on adapting the school network to the new school system until 31 March 2017. However, these projects had to obtain a positive opinion of the school superintendent responsible for the area of activity, who

¹⁶ *How will the changes proceed in the coming years*, <http://reformaedukacji.men.gov.pl/o-reformie/uczen-i-rodzic/jak-beda-przebiegaly-zmiany-w-kolejnych-latach.html> (17.02.2020).

¹⁷ *Local government officials want the costs of education reform paid back. MEN: The demands are unfounded*, <https://www.portalsamorzadowy.pl/edukacja/samorzadowcy-chca-zwrotu-kosztow-reformy-edukacji-men-zadania-sa-nieuzasadnione,127252.html> (19.02.2020).

had 21 days to issue it¹⁸. This involved decisions which schools would stay in operation in the coming years and what would happen to the premises after the former lower secondary schools (gymnasiums). These issues concerned the local community, and the decisions made were often controversial. Cracow can serve as an example here, in which the idea of establishing primary schools in some lower secondary schools met with a lack of acceptance of the education community, and as a result, as a last resort, the city's authorities decided to transform them into general secondary schools¹⁹. On the other hand, in the case of Żarek (a town in the Śląskie Province) – the School Superintendent did not accept the resolution of the City Council establishing a network of schools, and as a result the case ended up in the administrative court. Finally – according to the intentions of the commune, not the Superintendent – one primary school operates in the commune by the Supreme Administrative Court judgement²⁰.

In addition to further tasks for local government, the 2016 education reform also implied difficulties for the recipients of the universal education system, i.e. students and, indirectly, also their parents. The reform calendar caused the so-called accumulation of age-groups. At the same time, the last graduates of closed-down lower secondary schools and the first graduates of eight-year primary schools applied to secondary schools. These institutions conducted two recruitments on different principles, so formally these students did not compete with each other. In practice, however, the number of places in schools was limited and not all graduates started studying in the 2019/2020 school year in the institution they chose and aspired to. The then Minister of National Education, Anna Zalewska, reassured that, according to the ministry's calculations, places were guaranteed for all students and thus everyone had the right to education. She did not add, however, that these calculations also included industry schools, which, first, do not enjoy high reputation, and

¹⁸ Art. 210, 217 of the Act of 14 December 2016. Regulations introducing the Act – Education Law (Dz.U. 2017, item 60 as amended).

¹⁹ *Cracow. However, three middle schools will be transformed into high schools*, <https://gazetakrakowska.pl/krakow-trzy-gimnazja-beda-jednak-przekształcone-w-licea/ar/11821124> (19.02.2020).

²⁰ Judgment of the Supreme Administrative Court of 25 May 2018, reference number I OSK 2940/17.

second, they are reluctantly chosen by students, which, unfortunately, intensifies the collapse of vocational education in Poland. On the one hand, it seems to be socially accepted that the best students receive education in prestigious institutions, the weakest ones in those with the worst results. On the other hand, numerous grievances of students and parents were caused by the fact that neither earlier nor later age-groups did have such difficult conditions or such limited access to good education, and probably will not experience such strain. Thus, young people from the double age-group (people born in 2003 and 2004) became somehow a victim of the reform. It can even be argued that in their case the equal access to education was guaranteed by public authority to a lesser extent than in the case of other students. Due to these problems, Ombudsman Adam Bodnar became involved in the matter, directing a query to new Minister of National Education Dariusz Piontkowski. The Ombudsman undertook two interventions in July 2019, because he received information from concerned parents that a large proportion of students did not enter any school. According to the Ombudsman, this situation was unprecedented in the Polish education and led to the violation of the right to education guaranteed in the Art. 70 of the Constitution, and resulted from a hasty, unsubstantiated analysis of school reorganization. Thus, according to the Ombudsman, as a result of the reform, the quality of teaching will deteriorate and students' rights will be violated. The Ombudsman also pointed out that he had warned the Ministry of National Education about these problems on numerous occasions, and his comments resulted, among others, from discussions held with the school community and were based on the data regarding the number of places in schools sent by local governments²¹.

The confusion surrounding school institutions in Poland was also deepened by the teachers' protest. Education workers employed in public facilities under the leadership of the Polish Teachers' Union (the largest union in the teaching profession) began a school strike on 8 April 2019. The strikers demanded pay increases, greater financial outlays for education, changes in career advancement, as well as the resignation of A. Zalewska. The April deadline for the protest was chosen not without a reason. That is when exams take

²¹ *The Ombudsman tells the Ministry of National Education about the accumulation of years: how are you going to improve the situation of students?*, <https://www.rpo.gov.pl/pl/content/rpo-do-men-o-kumulacji-rocznikow> (20.02.2020).

place (eighth grade pupils and lower secondary school in 2019), and it is also the time to give final grades to secondary school graduates. This way, the strikers wanted to exert pressure on the Ministry of National Education, but the ministry remained steadfast. Public support for teachers decreased with each subsequent day of the protest, which is why the campaign ended on 29 April²². The strike, which was an expression of the helplessness of teachers due to the education crisis, did not bring the expected results but only provoked greater chaos in education in the key phase of education reform. The students and their parents were worried about whether the examinations would be carried out and whether the certificates would be issued on time. There were no lessons in schools and kindergartens, which meant that many parents had to take leave at work or otherwise organize care for their children during the protest. These problems did not affect private institutions, thus deepening the disparities between public and free education, and where the tuition fees are paid.

Differences in the learning outcomes between public and non-public schools can be illustrated by the example of Warsaw. The results of the eighth-grade exam in the capital are markedly different. It is worth looking at these results despite the growing trend in thinking about education, according to which the goal of education is not the test result, but the development of a young person. Nevertheless, non-public schools do much better in the ranking of exam results achieved in Warsaw primary schools. This is even more significant because they often abandon grading, written tests or homework. Importantly, the eighth-grade exam in 2019 was written for the first time and comprehensively tested the students' skills in mathematics, Polish language and a modern foreign language. The first 50 leading positions in the ranking (this list has 306 items) include 43 non-public institutions, four music schools (which due to their status are not subject to the Ministry of National Education) and three public institutions. Public schools dominate the last 100 positions in the classification. Moreover, the schools for special education occupy the lowest places in the ranking. Perhaps better results of non-public schools should be sought in the fact that teaching in them takes place in much smaller classes, in very good facilities, moreover, these institutions have access to numerous teaching aids, and there is very low teaching staff turnover. The

²² STRAJK, <https://znp.edu.pl/strajk> (20.02.2020).

last aspect is of particular importance because for many public schools the problem is the teachers' resignation from practicing the profession. The situation is aggravated by the reluctance of young people to take up the work of a teacher due to low earnings (especially at the beginning of their careers), low social prestige, high responsibility and excessive bureaucracy. These factors result in a significant number of unfilled vacancies in schools. Lack of teaching staff forces overtime work as a substitute teacher. This translates into lowering the level of teaching, problems with the implementation of the curriculum and the organization of extracurricular activities, and individual tuition²³. Thus, educational inequalities between students from public and non-public schools as a result of the 2016 education reform are becoming increasingly pronounced. Less wealthy students, whose financial situation does not allow for paying tuition fees, are less likely to achieve educational success which often translates into success in life. This means that access to education, contrary to the Art. 70 of the Constitution, is uneven in Poland and, what is worse, the school is moving away from the idea of full equality rather than drawing closer to it.

IV. Conclusions

According to constitutionalists, the right to education is one of the most important rights in the group of economic, social and cultural rights (the so-called second generation of human rights). Its guarantee contributes to the fulfilment of both the private interest of the individual and – which seems more important from the point of the state – to the public. This right was enshrined in the Art. 70 of the 1997 Constitution of the Republic of Poland. Through this article, public authorities, *inter alia*, pledged to ensure universal and equal access to education. This commitment should be treated as an ideal state which cannot be achieved in real social conditions. Nevertheless, the role of the state is to make efforts to come closer to this idea. To this end, the authorities provide free and public education and create a system of finan-

²³ *Double yearbook and other consequences of the education reform. RPO: it cannot be "somehow", we must focus on the quality of teaching*, <https://www.rpo.gov.pl/pl/content/seminarium-ws-podwojnego-rocznika-w-szkolach-srednich> (20.02.2020).

cial support for the least well-off students. However, the school reality seems to diverge from the ideal, which is the result of permanent changes in the education system. After 1989, three major reforms were carried out at the Polish school (1991, 1998, 2016) and a whole series of smaller transformations. Education has become an arena of political dispute during both election campaigns and the term of office of the public authorities. Subsequent governing formations in Poland are implementing their ideas to improve the school, which is why the institution's permanent feature is change. A change to which teachers and next age-groups must constantly adapt.

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