

Marek Kwiek

Educational and Human Rights in Poland

Published in: No Person Shall Be Denied the Right To Education: The influence of the European convention on human rights on the right to education and rights in; education, Jan

De Groof, Gracienne Lauwers (editors),
Antwerpen: Wolf Legal Publishers, 2004, pp. 407-420.

1.

Poland signed the European Convention on Human Rights on November 26, 1991 and ratified it on January 19, 1993. Consequently, Polish education has been under direct influence of the Convention for a decade now. Its influence has been strong on the level of policy-making and law-making in various aspects of education (after the fall of Communism in Poland in 1989, education of all levels gained autonomy and independence from centralized state control prevalent in 1945-1989; new laws were passed in both primary and secondary education (1991) and higher education (1990), with amendments in the following years). Major Polish debates relating the Convention to educational issues were devoted to religious instruction in public primary and secondary schools, teaching sexual education in early primary school and, to a smaller degree, the rights of the parents in education, often in connection with the first two issues. Neither health education nor the use of corporal punishment in schools were much debated. Therefore it is mostly in relation to teaching religion and sex education in public schools that the Convention was referred to in Poland in recent years in connection with education.

The right to education has been crucial to social, civilizational and economic development of countries and nations. Poland is still a relatively young nation, even though its fertility rate has been falling sharply in the last decade and now reaches the European average. In 1999, the number of young people under 29 years of age (almost 17 million) in Poland accounted for 43,7% of the population and slightly over 5 million pupils were of compulsory school age.¹ Almost all pupils in Poland continue their studies in public-sector schools (99%). Most of the funds come from the state budget. Pre-primary education (for children from 3 to 6 years of age) is regarded as the first level of the school system. Six-year-old children have the right to complete a year of preparation for primary education and as many as 97% of children of this age take advantage of the provision. Access to public and private pre-primary schools is fee-paying. Compulsory full-time education begins with (reformed) 6-year primary school (7-13 years of age), followed by 3-year lower secondary school (13-16 years of age). Upper secondary and post-secondary education consists of a number of variations: general upper secondary school, technical secondary school, vocational secondary school, technical secondary school, basic vocational school and post-secondary school. The entry to higher education system requires the certificate of the *Matura* exam (certificate of upper secondary

¹ See EURYDICE, the Education Information Network in Europe, Summary Sheets on Education Systems in Europe. Available on-line.

education final exams) and consists of various types of non-university and university higher education institutions: non-university higher vocational colleges, teacher training colleges, traditional universities, technological universities and academies. Admission is based on entrance exams or on free recruitment. At the end of 3- or 4-year higher vocational education, students are awarded the vocational qualification diploma and the title of B.A. which gives them access to the job market or to extended higher education studies. Universities and other university-type institutions of 4.5 to 6 year duration issue the university higher education diploma and the title of M.A.

Before 1989, higher education system and research were completely controlled by the state, as were other levels of education. The number of higher education institutions and the number of entrants were limited. In 1990, a new Law on Higher Education (still in force, despite the debates of a dozen project of a new law drafts in recent ten years) was passed by the Parliament and opened the way both to increasing the number of institutions and the number of students. Before 1989, there was only a single non-state controlled university (Catholic University in Lublin). In the academic year 2003/2004, the number of non-public higher education institutions reached almost 300; in the meantime, the number of students rose from 400,000 in 1989 to almost 2,000,000 in 2003 and is thought to stay there for demographic reasons. The substantial expansion of the system can be attributed to relatively liberal rules for establishing new (mostly private) institutions defined in the new law in the beginning of the 1990s and to a rather elite kind of the higher education system under Communism with relatively low enrolments.² Unlike in primary and in secondary education, the clearest division of higher education in Poland is between state and non-state (or private) higher education: currently, the level of enrolments in the private sector reaches 30% and is one of the highest in Central and Eastern Europe.³

One of the tasks of pre-school education is to iron out inequalities in the opportunities enjoyed by children from different backgrounds. Responsibility for the establishment and operation of public pre-school establishments is assigned to the local authorities. Analyses of the availability of pre-school educational establishments in 1993-1997⁴ and in the following years showed a continuing decline in numbers. Despite the decline in the numbers of such facilities, the number of children attending pre-school establishments rose to about 47% (in 1997). The reason for the increase was not an increase of pre-school vacancies (in the beginning of the 1990s, a few thousands of them were closed down, followed by a few hundreds in 2000s) but a demographic decline which resulted in fewer children of pre-school age. The data about trends in pre-school education broken down in terms of urban and rural areas clearly show that children in rural areas are disadvantaged by differences in the availability of pre-school education. It would be difficult to give a single reason for this state of affairs since the number of available vacancies in rural areas exceeds the number of children attending pre-school establishments. The problem may be rooted in the socio-economic conditions of the rural family – above all, the costs incurred by a family, especially one with many children (it is useful to note here that the current level of unemployment in Poland is 20%, with higher rates in the rural areas, and with the average in some Western and Northern parts of Poland

² See *Real Time Systems. Reflections on Higher Education in the Czech Republic, Hungary, Poland and Slovenia*, Jon File and Leo Goedegebuure (eds.), Enschede: CHEPS, 2004, 77 ff.

³ See Marek Kwiek, „The Missing Link: Public Policy for the Private Sector in Central and East European Higher Education”, *Society for Research into Higher Education International News*, 2/2003, June 2003.

⁴ *Convention on the Rights of the Child, Committee on the Rights of the Child, Consideration of reports Submitted by States Parties Under Article 44 of the Convention, Periodic reports of States parties due in 1998, Poland*. United Nations, 2 December 1999, p. 58 ff.

reaching 25-30%). There is a strict correlation between the level of primary and secondary education, the level of state funding for education and the level of unemployment in a given area: the worst average results in nation-wide tests of competencies of children 13 years of age are in the Northern and Western parts of Poland, with unemployment rates reaching 30%.

2.

The right of children to schooling free of charge is guaranteed by the Polish Constitution. The principles according to which the education system functions are spelt out in the Law on the Education System of 7 September 1991. In accordance with this law, the cornerstone of education is the eight-form primary school which is compulsory (changed after the educational reform in the Law on the Education System of 25 July 1998 into primary school age and lower level secondary school). Schooling is compulsory in Poland until 18 years of age. The network of public primary and lower level secondary schools should be organized in a such a way as to enable all children to fulfill their compulsory school requirements in accordance with article 17, paragraph 1, of the Law on Education System of 1991. Responsibility for the school network lies with the local authorities who are required to transport children to school if the distance between their home and the school in the district in which they live is more than three-four kilometers, depending on the school level. A child's parents are responsible for his or her regular attendance and compliance with the compulsory school attendance requirement is supervised by the principal of a public primary school in the district in which the child resides.

One indicator of the availability of education is the school enrolment rate. In Poland, primary and lower secondary education is almost universal. Since 1990, there has been a drop in enrolment in basic vocational schools and a simultaneous increase in enrolment in secondary vocational schools and in general education secondary schools or lyceums, reflecting an upward trend in secondary education.⁵ As far as higher education is concerned, the enrolment almost quadrupled in the 1990s; the educational boom was especially seen in part-time fee-paying studies (both in the public and in the private sector) in which the number of students between 1991 and 2001 increased ten times and its share in total enrolments rose from 23% to 55%. The demographic decline has come slowly to the higher education sector and in 2004, for the first time after 2004, the number of students did not grow; what it means for both public and non-public institutions is competition for students.⁶

3.

The right to education in Poland should be viewed within a specific context determined by key data referring to education. Let us explain that, in Poland, public expenditure on education (as percentage of total government expenditure) in 1999-2001 was 12.2; public expenditure on education, pre-primary and primary (as percentage of all levels) in 1990 was 42.8%, on secondary education 1999-2001 was 38% and on tertiary education 1999-2001 was 16%. As far as literacy in Poland is concerned, it is almost universal: adult literacy rate (percentage of ages 15 and above) is 99.6%. Net primary enrolment ratio for 2001-2002 was 98%, net secondary enrolment ratio for 2001-2002 was 91%, children reaching grade 5 for 2000-2001 was 99%. As far as priorities in public spending are concerned, the average public

⁵ Ibidem, p. 62.

⁶ See Marek Kwiek, "Academe in Transition: Transformations in the Polish Academic Profession", *Higher Education*, 45(5), June 2003 and Marek Kwiek and Taras Finikov, *Polish Law on Higher Education: Experience and Lessons*. Kiev: Taxon Publishing House, 2001.

expenditure on education for 1991-2001 was 5.4% (compared with health 4,6%, military 1,9% and total debt service 7,1%).

The access to rights in education in many countries is gender-related; in Poland, female primary net enrolment ratio is 98%, female secondary net enrolment ratio is 93% (both in 2001), secondary net enrolment ratio (female rate as percentage of male rate) was 1.03. The biggest differences between male and female access to education is in tertiary education: female tertiary gross enrolment ratio was 69% and tertiary gross enrolment ratio (female rate as% of male rate) was as high as 1.43 (both in 2001). Consequently, the number of female university graduates is much higher than male university graduates.⁷

4.

The preamble to the Law on the Education System does not refer to the European Convention on Human Rights as it was not ratified at that time (1991). It states that “education in the Republic of Poland constitutes the common good of the whole of society, and is guided by the principles laid down in the Constitution of the Republic of Poland as well as in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Convention on the Rights of the Child. Education and child-rearing – while respecting the Christian system of values – are based on universal ethical principles. The aim of teaching and child-rearing is to develop in young people a sense of responsibility, a love of their country, a respect for the Polish cultural heritage and, at the same time, openness to the cultural values of Europe and the world”.

Legal provisions in the Law respect the principle of freedom of private individuals and legal entities to set up and run schools and educational establishments. Private individuals may run private schools (on registering such schools with the school superintendent in whose district the school is to operate) and public schools (on obtaining the consent of the superintendent of schools). The certificates issued by private schools are equivalent to those issued by public schools. Private pre-school establishments receive subsidies from the local council budget and private schools from the State budget. Private higher education has so far received no subsidies from the state although it was entitled to apply for state research grants on the same basis as the public sector.

5.

The new Polish constitution of 1997 protects fundamental human and civil rights. Chapter II of it, entitled “The Freedoms, Rights and Obligations of Persons and Citizens”, enumerates the individual, political, economic, social and cultural freedoms and rights, and specifies the measures needed for their protection.⁸ The new Constitution guarantees such human rights as freedom to hold and participate in peaceful assemblies, freedom of association and right of involvement in public affairs and to submit petitions and complaints as well as suggestions to organs of public authority.⁹ The Constitution also provides for economic, social and cultural rights and freedoms, namely: the right of ownership, freedom to pursue an occupation of

⁷ *Human Development Report 2003*, United Nations, 2003.

⁸ See Chapter V „Framework within which human rights are protected” in *International Human Rights Instruments. Core Document Forming Part of the Reports of State Parties. Poland*. United Nations, October 7 2003, pp. 15-20.

⁹ See an excellent article by Daniel H. Cole, of Indiana University, “Poland’s 1997 Constitution in Its Historical Context”, presentation at the Polish Studies Center, Indiana University, Bloomington, 2000.

one's choice, freedom to choose one's workplace, right to safe and sanitary working conditions, to social security, health care, the right of families to have their interests taken into account in the state's social and economic policies, protection of the child, freedom of artistic creativity, environmental security, policies conducive to the satisfaction of the citizens' housing needs, protection of consumers, users and tenants. As well as, of major interest to us here, it provides for the right to education which is expressed in Article 70.

Under this right, education is offered in public schools without payment, access to education is universal and equal, there is a choice between public and non-public schools, and public funding is provided for educational institutions. Detailed regulations on education are laid out in the Law on Education and in the Law on Higher Education. Article 70 of the constitution states that:

”(1) Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfillment of schooling obligations shall be specified by statute. (2) Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education. (3) 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. (4) Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students. The conditions for providing of such assistance shall be specified by statute. (5) The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute.“

Chapter III of the Constitution defines the sources of law as: the constitution, laws, ratified international agreements and regulations (ordinances). The conformity of statutes and international agreements with the constitution, and the conformity of laws with international agreements, the ratification of which requires prior consent granted by law, is adjudicated by the Constitutional Tribunal. According to article 91 of the Constitution, international treaties ratified by Poland, upon their publication in the Journal of Laws, are part of the domestic legal order and may be applied directly, unless their application depends on the enactment of a statute. In addition, an international treaty ratified upon prior consent granted by law takes precedence over laws if such a treaty cannot be reconciled with the provisions of such laws. The ratification of an international treaty that deals with freedoms, rights or obligations of citizens requires prior consent granted by law.¹⁰

As mentioned in the beginning, Poland signed the European Convention on Human Rights in 1991 and ratified it in 1993. Poland is a party to other major international human rights agreements, both those originating in the United Nations framework as well as those created in the European framework. They include “International Covenant on Civil and Political Rights” (1977), “International Covenant on Economic, Social and Cultural Rights” (1977), “Convention on the Elimination of All Forms of Racial Discrimination” (1969), “Convention on the Elimination of All Forms of Discrimination against Women” (1982), “Convention on the Rights of the Child” (1991), “Convention against Torture and Other Cruel, Inhuman or

¹⁰ As described in *International Human Rights Instruments. Core Document Forming Part of the Reports of State Parties. Poland, op. cit.*, p. 16.

Degrading Treatment or Punishment” (1989) and “Framework Convention of the Council of Europe for the Protection of National Minorities” (2002).

From a historical perspective, the first Polish Constitution of May 3rd 1791 (the first Constitution on the European Continent) did mention education and had a separate chapter X entitled “The Education Of Royal Sons” which read: “Royal sons, whom the constitution destines for succession to the throne, are the first sons of the nation, wherefore attention to their good education is a concern of the nation, without prejudice, however, to parental rights. Under the government of the king, the king himself, together with the guardianship and with a supervisor of the education of the king's sons designated by the estates, shall see to their education. Under the government of a regency, the regency, together with the aforementioned supervisor, shall have the education of the king's sons entrusted to them. In either case, the supervisor designated by the estates shall inform every ordinary sejm about the education and conduct of the royal sons for confirmation by the sejm, so that in their education uniform rules continually and early instill in the minds of future successors to the throne religion and love of virtue, country, liberty and the national constitution”. No mention was made about education guaranteed for others (it is interesting to note that the Jagiellonian University in Krakow was established already in 1364 (the other two oldest Polish universities being University of Vilnius (1578) and University of Lvov (1661), now the oldest universities in Lithuania and Ukraine, respectively) and is one of the oldest in Europe, together with universities in Bologna, Paris, Padova etc).

6.

As far as religious education in the school is concerned, according to the Constitution, the religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed upon thereby. Pursuant to the Law of September 1991 on the System of Education and the relevant resolution of the Minister of National Education, religious education in the system of public education is conducted by a number of churches whose relations with the State are defined by means of separate agreements.¹¹ Religious education of a particular denomination is organized at the request of students' parents (or in the case of older youth – at the request of students themselves). In the case of a small number of interested students, instruction may be conducted within an inter-school group or in a catechetical point (which is part of the system of public education) located outside school premises. Similar principles obtain during the organization of ethics classes. Religious classes, Roman Catholic in the vast majority of cases owing to Roman Catholicism being the dominant religion in Poland, may be taught either by Roman Catholic priests or laymen; both groups of teachers are remunerated from the state budget. No cases of discrimination against certain denominations, or cases of favoring of certain denominations, were officially recognized by the Ministry of National Education and Sports in recent years.¹² No complaints were reported although two cases might be qualified as bearing certain characteristics of discrimination against denominations and both were resolved on the basis of a detailed interpretation of existing regulations (in 1999 the Ombudsman forwarded a letter of members of the Seventh-Day Adventist Church related to the organization of school competitions at periods coinciding with holy days for this group of believers; and in 2000 the Ministry received an address of representatives of the Orthodox

¹¹ *International Covenant on Civil and Political Rights, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Fifth Periodic Report, Poland*, United Nations, 13 January 2004, p. 115.

¹² *Ibidem*, p. 115.

community in Poland concerning e.g. the introduction of days free from school classes on holy days according to the Julian calendar).

Religion classes were re-introduced to public schools in 1990, after a period of absence; in pre-war Poland, religion classes were an obligatory subject in public schools. After the second world war when Communism was installed in Poland, religion was taught in both primary and secondary schools, with various degrees of complications dependent on the political relations between the state and the Roman Catholic Church, until 1961/61 when it was abolished in schools and sent to parishes. In parishes, between 1961 and 1981, priests had to follow tedious bureaucratic reporting procedures. It was only in 1981 that religion as subject taught in parishes was relieved of the state supervision in Poland. After the collapse of Communism in Poland, by a ministerial decree of 3 August 1990, religion returned to be taught in primary and secondary schools as a regular subject. According to art. 12 of the Law on the System of Education, “public pre-schools, primary and lower level secondary schools provide religion classes at parents’ request; higher level secondary schools provide them at the request of parents or students. After reaching the age of 18, they are provided at the request of students only”.

7.

The Constitution contains an explicit prohibition of the use of corporal punishment. Poland is also a State Party to the “Convention on the Rights of the Child” which stipulates that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”. The Polish Penal Code stipulates that everyone who beats a person or in another way breaches his personal inviolability, is subject to a fine, the penalty of restriction of liberty or of deprivation of liberty for up to one year. According to the report Poland submitted to the United Nations, “Poland is not in possession of information which would point to the existence of the problem of the use of corporal punishment in schools”¹³

The rights and obligations of parents in education are clearly described by law. Parents are required by law (art. 18 of the Law on the System of Education) to register the child at school, ensure his or her regular school attendance, ensure his or her conditions enabling the preparation to classes, and to inform the authorities about the form of realizing education by their child and about any changes in this respect. The law allows the existence of parents’ council which represents children’s parents, in each establishment (art. 53). The rules of the formation of the council is determined by parents in a given establishment. The council accepts its own books of rules and regulations (which cannot go against the statute of the establishment, though). The representation of parents may also taken on a different name than the parents’ council. The council is entitled to formulate opinions and recommendations about all aspects of the functioning of the establishment, it may gather financial funds from parents’ contributions and other sources

8.

Consequently, art. 2 of Protocol 1 of the European Convention on Human Rights which states that “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents

¹³ Ibidem, p. 133.

to ensure such education and teaching in conformity with their own religions and philosophical convictions”, seems currently well respected in Poland.¹⁴

Bibliography:

Cole, Daniel H. (2000) “Poland’s 1997 Constitution in Its Historical Context”, presentation at the Polish Studies Center, Indiana University, Bloomington, 2000.

Convention on the Rights of the Child, Committee on the Rights of the Child, Consideration of reports Submitted by States Parties Under Article 44 of the Convention, Periodic reports of States parties due in 1998, Poland (1999). United Nations, 2 December 1999.

EURYDICE, the Education Information Network in Europe, Summary Sheets on Education Systems in Europe. Available on-line.

File, Jon and Leo Goedegebuure (2004) (eds.), *Real Time Systems. Reflections on Higher Education in the Czech Republic, Hungary, Poland and Slovenia*, Enschede: CHEPS.

Human Development Report 2003, United Nations, 2003.

International Covenant on Civil and Political Rights, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Fifth Periodic Report, Poland, United Nations, 13 January 2004

International Human Rights Instruments. Core Document Forming Part of the Reports of State Parties. Poland. United Nations, October 7, 2003.

Kwiek, Marek and Taras Finikov (2001). *Polish Law on Higher Education: Experience and Lessons*. Kiev: Taxon Publishing House.

Kwiek, Marek (2003a), „The Missing Link: Public Policy for the Private Sector in Central and East European Higher Education”, *Society for Research into Higher Education International News*, 2/2003, June 2003.

Kwiek, Marek (2003b). “Academe in Transition: Transformations in the Polish Academic Profession”, *Higher Education*, 45(5), June 2003.

The National Human Development Report 2001. Poland and the Global Information Society: Logging On. UNDP, 2001.

¹⁴ Let me express my gratitude to Gracienne Lauwers, executive director of ELA, for her invaluable help with locating some research materials necessary for writing the present chapter.