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## ANALYSIS OF LEGAL ACTS REGARDING HOME EDUCATION IN POLAND – HISTORICAL APPROACH

**Abstract:** The purpose of this article is to show legal acts regarding home education in Poland in a historical context. Documents such as the Constitutions, the Educational System Act, the Educational Law Act, Amendments of the Educational System Act and the Ordinance of the Minister of National Education have been reviewed. Based on the above-mentioned documents, legislative changes related to homeschooling introduced over the last few decades have been analysed and presented. The article indicates also the direction of changes in Polish homeschooling and emphasizes difficulties related to them for homeschooling families.

**Keywords:** home education, homeschooling in Poland, Polish educational system

### ADMISSION

Home education in Poland is a relatively young phenomenon. As an alternative form of education, it is subject to legal regulations that are designed to control who and under what conditions permission to teach a child at home is given. The state through the relevant institutions has insight into the course and scope of the home education. Comparing Poland with other European countries it should be noted that it ranks among the countries with medium rigor regarding the use of home education.

## CHOICE OF LEGAL ACTS

In Poland, home education is an acceptable form of education. Its legality is based on legal acts that regulate the availability, course, and verification of achieved results. In this regard, Poland should be placed in a group of countries that allow parents to choose this form of education. However, at the same time, it keeps close control over their actions.

To be able to consider the legal conditions of home education in Poland over the years, it was necessary to choose the legal provisions that apply to it. The first documents that were taken into account were the Constitutions: the Constitution of the Polish People's Republic (1952) and the Constitution of the Republic of Poland (1997). The need to choose both Constitutions was dictated by the time frame in which the phenomenon of home education occurred in Poland.

A different criterion was adopted during the selection of acts and ordinances of the Minister of National Education. The legal acts in which significant changes occurred, regarding the provisions governing the use of home education as an alternative form of education, were selected for further analysis. Therefore, to be able to follow changes, the Educational System Act (07/09/1991<sup>1</sup>) should be taken as a starting point. This act for the first time mentions the possibility of implementing compulsory schooling outside of school. Other legal acts are: Amendments of the Educational System Act (13/03/2009), the Educational System Act (24/04/2014), the Educational Law Act (14/12/2016), the Ordinance of the Minister of National Education on how to divide parts general educational subsidy for local government units (22.12.2015) and the Ordinance of the Minister of National Education on the conditions and method of assessing, classifying and promoting students and listeners as well as conducting tests and exams in public schools (30.04.2007). Although the ordinances have been updated, the provisions on home education have not changed.

Based on selected legal documents, the changes that have taken place in the field of home education have been traced and the effects of their introduction have been analysed.

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<sup>1</sup> The daily dates of individual documents are deliberately cited. This is to facilitate access to relevant legal acts, in particular to specific ordinances or amendments to the Act.

## CONSTITUTIONS

Considering the legal conditions of home education in Poland should start with the most important document regulating the functioning of the state, i.e. the Constitution. Several entries indicate the legal legitimacy of an alternative form of education like the home education.

The legal history of home education begun with the Educational System Act of 1991. At that time, the Constitution of the Polish People's Republic of 1952 was still in force in Poland. Article 61 of this document states: "Citizens of the Polish People's Republic have the right to education. The right to education is ensured by [...] mainstream, free and compulsory primary schools" (Konstytucja PRL 1952, art. 61 ust. 1, ust. 2). From such a provision follows the semantic contradiction. Considering only the first sentence, it would seem that the phrase "a citizen has the right to learn" is an emphasis on civic freedom enabling freedom of decision as to the form and content of teaching. However, in the next sentence, the legislator talks about compulsory primary school, thus closing any possibility of choosing another form of education. It is also worth noting that the obligation to raise a citizen was entrusted to the state and not to the family (Konstytucja PRL 1952, art. 68). Therefore, the state had full control over the way of education and the content passed on to its citizens.

With the adoption of the new Constitution of the Republic of Poland in 1997, the approach to the function of the family and the freedom, rights, and obligations of the citizen changed. In Chapter II, Article 48, one finds the provision: "Parents have the right to raise children in accordance with their beliefs" (Konstytucja RP 1997, art. 48 ust. 1). At the same time, the parent is obliged to take into account the maturity of a child, freedom of conscience, religion, and beliefs. Article 58 extends this right to provide parents with the opportunity to raise their children following their moral and religious attitudes. In both formulations appears the term "conviction", which would indicate that parents have internal certainty as to the correctness of their decisions or have an established view supported by a conviction of the good of their child.

In the same Chapter in Article 70 of the Polish Constitution one finds the most important entry cited by home education propagators. It sets out the right of every citizen to education and the freedom of parents to choose their educational institution for their child (Konstytucja RP 1997, art. 70 ust. 1, ust. 3). At the same time, the condition of compulsory education of the citizen up to the age of 18 was imposed. It seems that through this provision, the path to alternative educational forms has been opened. However, the clarification made by the legislator about the "educational institution" may be a reason for an ambivalent understanding of this

content. Home education goes beyond school, but on the other hand, according to the Polish law, it still depends on the mainstream school. By reading the legal solutions proposed by the legislator, it can be seen that once again semantically distant terms are juxtaposed with each other. The “right to learn” should be interpreted as freedom and the possibility of man to acquire knowledge, while “compulsory” imposes, indicates coercion and submission to someone or something. Besides, “compulsory schooling”, which is juxtaposed within two sentences with the earlier used phrase “compulsory education”, introduces terminological confusion. First of all, it is subconsciously felt that the content range of both is not the same. Secondly, according to Marek Budajczak, there is a danger of conflicting the provisions of the basic law with international law. It can lead to a situation where in certain conditions the overriding constitutional principle of compulsory schooling will not be fulfilled (Budajczak 2004, s. 42–43).

#### ANALYSIS OF LAWS REGARDING THE EDUCATION SYSTEM – COMPULSORY EDUCATION AND COMPULSORY SCHOOLING

In 1991 come into effect the Educational System Act which aimed to clarify all issues related to education in Poland. It is the most imprecise of all legal acts. It does not specify schools that could provide home education. There is also the first mention of compulsory schooling, which is not included in the Polish People’s Republic Constitution in force at that time. Home education is defined by the Act as “fulfilling compulsory schooling outside school”. From this moment it will be called that in the subsequent legal acts.

At this point, one should take a closer look at the previously mentioned fulfilling “compulsory education” and “compulsory schooling”. It would seem that “education” as a word has a much broader scope of meaning. As part of “education” understood as learning, the student receives it in an educational institution regardless of its type or even out of it. Moreover, thinking about education does not determine age barriers. Thus, “compulsory schooling” would be a sub-term of “compulsory education” and it would only apply to an educational establishment where education is received.

However, looking at the legal provisions one finds out that the above reasoning is not consistent with the intentions of the legislator. In Article 15 of the Educational System Act in paragraphs 2 and 3 one learns that primary school is compulsory and that “compulsory schooling” understanding as schooling in it, cannot last longer than up to 18 years old. In later changes, compulsory education will be extended from elementary school to lower-secondary school. After the next

reform of education, it will return to the earlier idea of the eight-year primary school. What is then a “compulsory education”? The legislator understands it as a continuation of the education of a student who finishes compulsory primary or lower-secondary school. In this case, the age limit of 18 also appears as an indicator of the end of the state’s “care” of the student. Terminological clutter and not very successful wording can lead to misinterpretation of the text or illogical conclusions. Budajczak, referring to the understanding of home education as “fulfilling compulsory education outside of school”, compares this verbal slap to an attempt to fulfil the marriage obligation while maintaining extramarital relationships (Budajczak, 2004, s. 45). Such a humorous example perfectly illustrates the language absurdity that can be found in applicable legal provisions.

In 1998, in the Amendment of the Educational System Act, there is for the first time a provision regarding the implementation of not only compulsory schooling outside the school but also compulsory education. It is a reference and adjustment of legal provisions to the Polish Constitution adopted in 1997. From now on, the parent will be able to educate at home also a child who has left the primary or lower-secondary school.

The Amendment of the Educational System Act of 1998, as well as further legal acts, specify the type of school in which the home education can be implemented. Thus, from 1998 until 2016, the legislator talks about primary school, lower-secondary school, and secondary school, in which a parent can apply for permission to carry out home education. In 2016, a completely new Educational Law Act was adopted, which by abolishing the lower-secondary school institution returns to an eight-year primary school.

It is emphasized in each legal act that the applicant for home education is a parent, and the headmaster of the school “can authorize” it to be run. In the Amendment of the Educational System Act of 1998 is added provision to specify the conditions in which the headmaster determines how home education should be conducted. However, it has not been specified anywhere what the legislator understands under this wording and how it should be used. Moreover, the lack of specific guidelines implies the threat that a school headmaster will subjectively issue a positive or negative decision. This decision puts parents who want to conduct a home education for their child in an uncertain and stressful situation. In this case, the constitutional freedom of a parent about deciding on the education and upbringing of his child is treated as a subordinate law and must be subordinated to the personality, characterological and ideological features of the headmaster of the institution.

## CONDITIONS FOR ISSUING CONSENT FOR HOME EDUCATION

Parents who want to teach their child must fulfil a number of conditions laid down by law.

In the first the Educational System Act of 1991, the state does not impose any conditions that must be met by a parent seeking permission for home education. Therefore, this law leaves the greatest freedom of decision. However, it should be remembered that in 1991 home education, as well as other forms of alternative education, were not known in Poland. The first mentions of home education come from 1995 when Marek Budajczak and his wife began educating their children at home (Budajczak, 2019). Understandably, the legislator did not feel obliged to the obligation to set conditions for a phenomenon that did not occur or was marginal.

With the advent of lower-secondary schools, a change in the education system was necessary. This time the legislator introduces the term “conditions” for fulfilling the school obligation outside the school but does not specify what they are. More importantly, the headmaster of the facility is responsible for their preparation and hence each school can set them according to its own rules based on its criteria or views.

In 2009, the Amendment to the Educational System Act sets out precise steps that a parent must follow to be allowed to have a homeschooling. In this provision, the roles of the headmaster and parent are very clearly distinguished. Moreover, it is putting the parent in a subordinate position relative to the education system and the person of a headmaster. In addition, the use of the term “authorization” is marked officially and bureaucratically and triggers negative emotions associated with the need to meet strict guidelines. Therefore, a parent who wants to run a home education for a child must meet certain conditions. The first is the need to submit an application for the desire to conduct home education by the deadline, i.e. by 31 May of the year preceding the start of possible education. This forces the parent to decide in advance what form of education he will choose for his child. This choice is also stressful because the decision made by the parent will have consequences throughout the school year. This formulation of provisions prevents a parent of a child who, for various developmental or psychophysical reasons, would need this form of education, to undertake such education outside the statutory deadline or during the school year. The legislator also does not provide for the possibility of a parent resigning from conducting home education during the school year and including the student in the school class.

In 2014, the new Educational System Act simplify the current provision regarding the date of applying for home education. This time the legislator allows the opportunity to study outside school even during the school year. Guidelines with this wording apply to this day.

The second condition enshrined in the Act of 2009 is the need to have a positive opinion of a Psychological and Pedagogical Counselling Centre. The legislator indicates that such an opinion can be issued by any consulting centre regardless of whether it is public or not. The possibility of a parental self-determination about the good of the child is compared with the decision of a group of specialists. This decision based on the study - may it be conducted as objectively as possible – and determine the possibilities and maturity of a child to learn from the parent. The subsequent legislative changes from 2014 speak only of the opinion from the Psychological and Pedagogical Counselling Centre. The provision specifying what type of counselling is removed. In practice, for the parent nothing is changed. In 2016, the legislator returns to the specific indication of the consulting centre, but this time it is more stringent in its records. The parent is forbidden to use the services of non-public consulting centres. The Education Law Act explicitly states that only public consulting centres have the privilege of giving an opinion on the possibility of a child joining home education. Assignment of entitlement to decide on home education to public counselling centres indicates activities that extend state control over this form of education. Therefore, in the case of a negative opinion, the parent has limited possibilities to appeal or seek support in another place.

Another criterion is the statement of parents on providing the child with conditions enabling the implementation of the curriculum applicable at a given stage of education. This general provision does not specify what such conditions can be and how to understand them. By signing this declaration, the parent takes responsibility for following the same scope of the curriculum as the school teacher, often using the same course books and educational methods. Interestingly, in the following Acts, the wording of this provision remains almost unchanged. This suggests pedagogical and philosophical stability as to who in the country is responsible for shaping new generations of citizens. The commitment of parents to follow the curriculum which the parent may or may not agree with prevents him from choosing contents which the child is particularly interested in or towards which he has a particular predisposition. A leaving the curriculum may cause problems with passing the qualifying exam for the next class. Besides, in case of failure, permission to homeschooling will be withdrawn. Obligation of an accession to this form of knowledge checking which is imposed on both the child and the parent is the last condition specified in the Act.

## QUALIFYING EXAM

In 1991 the Educational System Act introduced a provision that a home-educated child must pass the qualifying exams. In the following Amendment to the Educational System Act, as well as in subsequent other legal acts, the guidelines are only clarified, without introducing significant changes. There is a wording about the classification carried out based on subjects included in compulsory educational classes. According to the Ordinance of the Minister of National Education of 30 April 2007, the qualifying exam does not cover such subjects as technique, art, music, and physical education, as well as additional educational activities. In later years, IT activity also joins this group. Completion of the required material takes place based on practical work. Other obligatory subjects are subject to the written and oral exams. According to the assumptions, the parent receives the scope of material based on which the classification will take place. A positive exam that promotes the child to the upper class becomes the condition of further consent for conducting a home education by its parent. In the procedure thus adopted, one can see the desire to maintain control by the state as to the level of implementation of the adopted curriculum. There is a compulsion to implement the outlined guidelines, without the possibility of departing from them in favour of the real talents and interests of the child. It should also be mentioned at this point that the child and parent are in a more stressful situation than in the case of the mid-year and end-year classification of a student in a school class. In this case, the child and the parent experience unequal and even oppressive treatment in relation to other children learning traditionally. One can see the lack of trust of the state towards a parent who, according to the legislator, would not be able to objectively assess the knowledge and skills of his child in the required curriculum.

## REGIONALIZATION

Many controversies arose around the subject of the regionalization of children wishing to meet the compulsory education and compulsory schooling outside of school. Until 2016 when the Education Law Act was implemented, in subsequent acts and introduced to them amendments, there were no provisions that would limit access to educational institutions for parents and their children. A homeschooling child could belong to any school that, according to parents, was friendly to this form of education. As a result of this fact, children were often enrolled at schools many kilometres away from their place of residence or in another province. The lack of regionalization also helps children staying abroad. Parents living abroad



had the opportunity to implement home education in accordance with the Polish curriculum. Moreover, they can teach their children with an emphasis on Polish culture and tradition. In 2016, despite parental protests the Educational Law Act states: “Permit (regarding home education) can be issued before the start of the school year or during the school year, if the kindergarten, primary school or secondary school to which the child has been enrolled, is located in the province where the child lives” (Prawo oświatowe 2016, Art. 37. ust. 2. pkt. 1). As a result, parents stayed forced to choose a school from a limited number of home-friendly facilities. As can be seen, it is contrary to Art. 70 of the Polish Constitution, which says of the freedom to choose an educational institution. Polish families living outside the country were put in an even more difficult situation. In truth, those students who have already started this form of education can continue it under the current conditions but for new families, the introduction of such a provision in the Educational Law Act has become a major impediment or even prevented from taking up such a challenge. The legislator in article 1 of the Education Law stresses that one of the aims of the education system is “to support teaching Polish and teaching in Polish among Poles living outside of Poland and children of migrant workers” (Prawo oświatowe 2016, Art. 1. ust. 23). However, this does not stop the legislator from taking away Polish communities from the possibility of using home education, on the same rights as for children living in Poland. The Ministry of National Education justifies this fact by the possibility of participation of Polish children in classes organized by the Centre for the Development of Polish Education Abroad (ORPEG), which is responsible for the offer of educational classes conducted in Polish. According to the Ministry of National Education, further arguments are the inability to transfer subsidies to students abroad and the difficulty of passing classification exams (*Edukacja domowa dla Polaków za granicą* 2017). Unfortunately, these arguments are not real. The ORPEG offer lacks science teaching in Polish, as well as the possibility of obtaining a Polish school certificate. Moreover, the Polish parents who are already in the process of educating their children at home, take advantage of extra-curricular activities conducted by the patronage school, as well as come to Poland with the child to pass its classification exam without any problems. In light of these facts, it seems incomprehensible to the state that its goal should be to look after the well-being of its citizens regardless of where they are. Each Polish child should have the undeniable possibility of education in the national language, and legal provisions should enable them to do so.

The introduction of regionalization at first might seem like a very big interference in the right to civil freedom. Indeed, in the eyes of parents it certainly is. On the other hand, one should take a closer look at the activities of some private schools,

whose main source of income has become the association of students covered by home education. Until 2015, the subsidy for a child attending school and for those who received home education was the same. With the introduction of the education system reform, the subsidy was reduced by 40%. Andrzej Gniadkowski, editor of the local community journal "Wspólnota", praising the change in the statistical weight of children fulfilling their compulsory schooling outside of school from 1 to 0.6 in the ordinance on the division of the educational part of the general subsidy. He notes that local governments struggled with the problem of schools that were run by foundations. In these institutions, it happened that the majority of students, even in kindergarten departments, did not physically attend school (Gniadkowski, 2019). The subsidy, which reached the institution together with the child, at relatively low costs of leading the student in home education, became the lucrative interest of non-governmental organizations. According to Gniadkowski, the reduction in subsidies for homeschooling children and regionalization are the response of the Ministry of National Education to the needs of local governments.

#### CHILDREN WITH DISABILITIES IN HOME EDUCATION

In the Educational System Act of 1991, there are no provisions regarding the possibility of starting a home education by a child with a disability. Only in 2014, the first mention of this topic appears. It is worth noting that all records apply only to children with moderate and severe intellectual disabilities. The Education System Act of 2014 releases mentors of a child with moderate or severe intellectual disability from the need of having an opinion from a Psychological and Pedagogical Counselling Centre. Also, parents and their children do not have to enter annual qualifying exams in each school year in which a child meets the compulsory schooling or the compulsory education outside school. In the Education Law Act of 2016, the legislator additionally exempts such a student from the need to look for a school for himself within a region, i.e. a province, and clarifies the provision regarding the total departure from the need to take qualifying exams.

The legislator, without providing any procedural facilities for other disabilities or dysfunctions, showed complete ignorance of children and their parents who could find the perfect form of education in home education. Possibilities of exemption from qualifying exams or facilities that would assist a student with disabilities in approaching them would certainly be a great support and encouragement for parents to try to educate at home. Leaving children with disabilities and their carers alone results in their being exposed to the grace or disgrace of the society around them. It becomes blurred to be an autonomous person, in favour of dependence

on others. The subjectivity of a child with a disability and its family must face beliefs of other people, prejudices, stereotypes, and outlooks.

Looking at the wording in both Acts, one can see how the language has changed. Along with the new rules, it appears the term “intellectual disability” instead of “mental retardation”. The shift towards non-negatively marked expressions, directing thinking without discrimination and assessment, is the result of the introduction in 2015 of relevant legal provisions regulating these issues (Rozporządzenie Ministra Edukacji Narodowej 2015).

### “PRIVILEGES” OF A HOME-EDUCATED STUDENT

The title of this section indicates that children learning at home receive some added value, which is guaranteed by the legislator. However, parents wishing to educate their children could count on the state aid defined in the Act not immediately. It was only in 2009 that a laconic provision appeared regarding the right of children to participate in home education in non-compulsory extracurricular activities taking place at school. Importantly, the formulated provision applies only to the child. The parent was omitted in this relationship. It can be assumed that before 2009 a parent, who wanted his child to participate in additional optional activities for the student, could only count on the goodwill of the teacher and the headmaster. Marking in the Act of 2009 the possibility of participating in such activities for a child who does not physically attend a school, gave the parent a legal foundation to enforce his rights (Zmiana do ustawy o systemie oświaty 2009, Art. 16 ust. 13). With the introduction of the Educational Law Act in 2016, there is a legal regulation that further clarifies and at the same time organizes the rights of homeschooling children as a student of the school. This time, the legislator does not forget about parents, putting them on an equal footing with the school. The guardian and the child receive from the state the possibility of using school support in a form that has not been regulated by law yet. Therefore, the student is entitled to attend extracurricular activities at school, which is a repetition of the previous enrolment but also has access to course books, educational materials, and exercise materials. Moreover, a homeschooling child can use teaching aids from the school resources to implement the curriculum, but only after consultation with the headmaster. An important support for the student as well as for the parent is the opportunity to participate in consultations preparing for the annual qualifying exams (Prawo oświatowe 2016, Art. 37 ust. 7).

The introduction of such provisions in the Act for the first time indicates a shift towards the rights of the child and parent and not only imposing obliga-

tions on them. The “privileges” they have received are not particularly innovative, but they are important in terms of equalizing opportunities between children at school and those educated at home. The need to include in the Act the rights and facilities that are obvious to every student traditionally studying in the school class may indicate practices that deprived homeschooling children of this possibility. It seems, that in spite of the fact that almost every student has obvious situations in the law, the desire to notice and follow the needs of parents and children learning an alternative form is commendable. From a broader perspective, for the first time, a classroom and homeschooling student and their parents have equal rights.

### SUMMARY

Looking at the changes in the Polish education system and the legal conditions that accompanied it one can get the impression that the more imprecise legislative provisions, the greater the freedom and the ability to decide about the children. This statement would be true if the popularity of home education in Poland remained at the same level. However, observing the changing regulations one can also notice an increase in interest in alternative forms of education. All laws and their subsequent modifications are secondary to the growing number of home education participants. In the case of home education, the state in a veiled way regulates and controls the actions of its citizens by putting them in a subordinate role to the authoritative education system. In conclusion, the state uses this specific care and watches for equal opportunities for all students, but also has a lack of trust in the parent as an educator who could pass on to the next generation an ideology or outlook inconsistent with generally accepted.

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#### ANALIZA AKTÓW PRAWNYCH DOTYCZĄCYCH EDUKACJI DOMOWEJ W POLSCE – PRZEKRÓJ HISTORYCZNY

**Streszczenie:** Celem tego artykułu jest przedstawienie aktów prawnych dotyczących edukacji domowej w Polsce w kontekście historycznym. Takie dokumenty, jak konstytucje, ustawa o systemie oświaty, ustawa o prawie oświatowym, zmiany w ustawie o systemie oświaty oraz rozporządzenie Ministra Edukacji Narodowej zostały poddane przeglądowi. Na podstawie wyżej wymienionych aktów prawnych przeanalizowano i zaprezentowano zmiany legislacyjne dotyczące edukacji domowej wprowadzone w ciągu ostatnich kilku dekad. W artykule wskazano również kierunek zmian w polskim szkolnictwie domowym i podkreślono związane z nimi trudności dla rodzin uczących w domu.

**Słowa kluczowe:** edukacja domowa, homeschooling w Polsce, polski system edukacji