

LABOR et EDUCATIO

No. 7/2019

STUDIES

Marek Klimek

ORCID 0000-0001-5908-4112

Pedagogical University of Cracow, Poland

The Right to Education in the 20th-century Polish Constitutions

Prawo do nauki w konstytucjach Polski XX wieku

Introduction

The right to education is one of the most crucial human rights. It is widely guaranteed by numerous documents within the international human rights protection system, both at the universal level (Universal Declaration of Human Rights¹, International Covenant on Economic, Social and Cultural

¹ In accordance with art. 26 of the Universal Declaration of Human Rights, everyone has the right to education. It should be compulsory and free, at least at the primary school level. Furthermore, it was recognized that technical and vocational education should be widely available, and higher education should be available to everyone on an equal basis, depending on one's personal merits (Article 26 [1]). Pursuant to the Declaration, the purpose of education is to fully develop human personality and lay grounds for respect for human rights and fundamental freedoms (Article 26 item 2). Furthermore, the Declaration gave parents priority in choosing the type of education for their children (Article 26, item 3). See art. 26 item 1–3 of the *Universal Declaration of Human Rights of December 10, 1948*.

Rights², Declaration on the Rights of the Child³, Convention on the Rights of the Child⁴), as well as regional, particularly including Europe (Europe-

² In accordance with art. 13 item 1 of the International Covenant on Economic, Social and Cultural Rights, States Parties to the Covenant recognize everyone's right to education. Education should seek to „fully develop personality and a sense of human dignity, as well as strengthen respect for human rights and fundamental freedoms.” Moreover, education should „allow everyone to effectively participate in a free society, develop understanding, tolerance and friendship among all peoples and all racial, ethnic or religious groups, and support the United Nations' efforts to maintain peace.” Art. 13 item 2 recommended that: primary education should be compulsory, free and available to all; secondary education in various forms (including technical and vocational secondary education) should be widely available to all as a result of taking appropriate measures, particularly the gradual introduction of free education; higher education should be available on an equal basis to all, based on one's aptitude, as a result of appropriate measures, particularly the gradual introduction of free education; elementary education should be encouraged or developed for people who do not have full primary education; it is necessary to actively develop the school system, establish a scholarship system and constantly improve the material conditions of staff employed in schools. Furthermore, Art. 13 item 3 drew attention to the obligation to respect the freedom of parents (or legal guardians) in the choice of schools for their children other than those run by public authorities (but meeting the minimum teaching requirements specified by the state) and to provide their children with religious and moral guidance in accordance with their own beliefs. Art. 14 of the Covenant requires that compulsory and free primary education be introduced in those countries that had not yet done so. See Art. 13 items 1–3; Art. 14 of the *International Covenant on Economic, Social and Cultural Rights of December 16, 1966*. It should be added that the second of the Covenants established on December 16, 1966, i.e. the International Covenant on Civil and Political Rights, does not refer directly to the guarantee of the right to education. Art. 18 item 4, in turn, imposes on all States Parties to the Pact the obligation to respect the will of parents (legal guardians) in providing their children with religious and moral education in accordance with their own beliefs. See Art. 18 item 4 of the *International Covenant on Civil and Political Rights of December 16, 1966*.

³ According to principle 7 of the Declaration of the Rights of the Child adopted on November 20, 1959, every child has the right to education. It should be free and compulsory at least for primary school. In addition, the child „should receive an education that raises their general culture and, under equal opportunities, enables them to develop their abilities, develop common sense and a sense of moral and social responsibility, as well as to become a useful individual in the society.” Parents bear special responsibility for the upbringing of the child; they should take into account the child's welfare above all else. In turn, it is the duty of the society and the state authorities to facilitate the exercise of children's rights. See principle 7 of the *Declaration of the Rights of the Child of November 20, 1959*.

⁴ Art. 28 item 1 of the Convention on the Rights of the Child of November 20, 1989 recognizes a child's right to education. To exercise this right, the following obligations were imposed on States Parties to the Convention: the obligation to make primary education compulsory and free for all; supporting the development of various forms of secondary education (general and vocational) and ensuring its accessibility for every child and taking appropriate measures to this end, i.e. introducing free teaching and providing financial assistance where necessary; taking action to ensure access to higher education based on one's aptitude; providing school information and

an Convention on Human Rights – Additional Protocol No. 1⁵, Charter of Fundamental Rights of the European Union⁶, European Social Charter⁷). The right to education was also an indispensable element of the catalog of human rights contained in all basic laws in Poland in the 20th century. This does not mean, however, that this right did not exist before being codified in numerous conventions, pacts, declarations, constitutions and other legal acts. As Łukasz Kierznowski rightly points out, it basically functioned since the earliest times, starting from the basic forms of social life organization, and the lack of its direct expression and normalization in legislative acts did not preclude

counseling to all children; taking steps to ensure regular school attendance and reduce school dropout rates. States Parties to the Convention were obliged to ensure that discipline in schools be introduced with respect for the child's dignity and in accordance with the Convention. It was also recommended to support and develop international cooperation in the area of education, particularly to eliminate ignorance and illiteracy in the world, and to facilitate access to scientific and technical knowledge and modern teaching methods. These activities should take into account the special needs of developing countries. In turn, Art. 29 of the Convention indicated that a child's education should be focused on: developing their personality, talents and mental and physical abilities; developing respect for human rights and fundamental freedoms and the principles contained in the United Nations Charter among children; developing among children respect for parents, cultural identity, language and values, national values, for their own country and other cultures; preparing the child for a responsible life in a free society, in the spirit of understanding, peace, tolerance, gender equality and friendship between all nations, as well as ethnic, national and religious groups; developing respect for the environment. See art. 28 and 29 of the *Convention on the Rights of the Child of November 20, 1989*.

⁵ According to the content of art. 2 of Additional Protocol No. 1 to the European Convention on Human Rights, no one may be deprived of their right to education. At the same time, while realizing its functions in the area of upbringing and teaching, the state recognizes the parents' right to provide upbringing and teaching in accordance with their own religious and philosophical beliefs. See art 2 of Additional Protocol No. 1 to the European Convention on Human Rights of March 20, 1952. (Journal of Laws of 1995, No. 36, item 175).

⁶ In accordance with art. 14 of the Charter of Fundamental Rights of the European Union, everyone has the right to education, including free compulsory education, as well as access to vocational training and lifelong learning. The freedom to create educational institutions with due respect for democratic principles and the parents' right to ensure the upbringing and teaching of children in accordance with their own religious and philosophical beliefs, as well as in accordance with national legislation in this regard, was also pointed out. See Art. 14 of the *Charter of Fundamental Rights of the European Union of December 7, 2000*.

⁷ The European Social Charter emphasizes the right to vocational training. In accordance with Art. 10 item 1, the Parties to the Charter undertake to „provide or, where necessary, support technical and vocational training of all people, including disabled persons, in consultation with employers' and employees' associations and allow access to higher technical and university education based on the sole criterion of one's individual aptitude.” See Art. 10 item 1 of the *European Social Charter of October 18, 1961*. (Journal of Laws of 1999, No. 8, item 67).

its actual existence. For this reason, in his opinion, the recognition of the right to education in international acts and constitutional provisions should be seen in terms of recognizing this right, and not bringing it to existence (Kierznowski, 2017).

The point of this paper is to compare the constitutional guarantees regarding the right to education in basic laws of the 20th century in Poland and to attempt to determine the impact of changing historical and political and political background in the 20th century on the constitutional regulations of this right. Analyzing both the content of individual Constitutions and the significance they attached to human rights issues required considering the broader context of the political, social or economic changes experienced by Polish society in the 20th century. Due to the enormous complexity of these processes, the study does not exhaust this issue completely, especially in the context of the practical implementation of constitutional assumptions. However, the author's intent was to show the evolution of perception of the right to education in the basic laws of the 20th century in Poland. Therefore, the considerations focus in particular on analyzing the assumptions of the Constitutions of 1921, 1935, 1952 and 1997 regarding the right to education, its essence and the material and subjective scope.

Subject matter of the right of education

The right to education results directly from the essence of humanity, from the natural need to acquire knowledge and explore the world. Education provides everyone with the opportunity to acquire knowledge and skills necessary to properly functioning not only in one's personal life but also in society. In its document developed during the 1974 session in Paris, UNESCO described education as „an entire process of social life implemented through the means by which individuals and social groups learn to consciously develop the fullness of their personal possibilities, attitudes, talent and knowledge for themselves and for the benefit of the national and international community” (Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 1974). In turn, the Constitutional Tribunal in its ruling of November 8, 2000 stated that „the right to education is one of the fundamental rights of an individual in modern society. This right must be considered both in terms

good and individual value as well as an important basic social good. Pursuing the right to education is not so much a special privilege of modern man, but it is an indispensable prerequisite for the development of society and at the same time the full participation of an individual in social life. Universal education has become the most important engine of economic and civilizational development in the modern world” (Ruling of the Constitutional Tribunal of November 8, 2000, SK 18/99). Agnieszka Grzejdziaż-Przybyłowicz rightly notes that the right to education should be considered from two perspectives. On the one hand, it is one’s individual good, while on the other it is a basic social good. That is why its pursue is important not only for the individual but also for the society as a whole, and is an indispensable prerequisite for the development of not only an individual but also the entire community (Grzejdziaż-Przybyłowicz, 2017).

One should also note the inseparable close relationship between the right to education and compulsory education. Its practical manifestation is compulsory schooling obligation, commonly imposed by the internal legislation of individual states, setting out the need to obtain education at a specified level, at least primary school. This implies the obligation of the state, and then the children’s parents and legal guardians to provide them with the conditions to receive education. Moreover, at a level that corresponds to compulsory schooling, education should be free, public and accessible to everyone. In this context, Helena Babiuch notes that, in practice, it means that children must attend school regularly at the level specified by the legislator (usually primary education), or for a specified period, i.e. age of compulsory schooling (Babiuch, 2008)⁸. In Babiuch’s opinion, the issue of the right to education should be interpreted differently in relation to children and adults. While the right of children to learn takes the form of a universal compulsory education until the

⁸ Polish law makes a distinction between compulsory schooling and compulsory education. Compulsory schooling involves compulsory primary school attendance. In accordance with art. 35 item 2 of the Act of 14 December 2016 on Educational Law (Journal of Laws of 2019, item 1148), compulsory schooling of a child begins at the beginning of the school year in the calendar year in which the child turns 7, and lasts until graduating from elementary school, but no longer than until the age of 18. At the request of parents, primary education may also be started by a child who turns 6 in a given calendar year. Compulsory education determines how long people should attend school under the law. In accordance with art. 35 item 1 of the Act of 14 December 2016 on Educational Law (Journal of Laws of 2019, item 1148) and in connection with art. 70 item 1 sentence 2 of the Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws of 1997 No. 78, item 483), it covers persons from 7 to 18 years old.

age specified by the law, under the supervision of parents and relevant public authorities, for adults is becomes a ‚pure’ right, in the sense that continuing one’s education depends on one’s free decision, as long as they want to expand their knowledge beyond the scope of compulsory education (Babiuch, 2008). The constitutional compulsory education aims to guarantee all children access to education at least at the primary school level.

Constitution of March 17, 1921

Having regained independence, Poland faced the need to regulate the organization and functioning of the entire public administration system. This meant the need to consolidate the lands previously belonging to the three partitioning powers, not only in administrative terms, but also economically and socially. One of the important areas of the state’s functioning in which significant backwardness occurred was also education. The partitioners’ activities related to denationalization left a lasting mark on Polish society. Illiteracy was a common issue. There were also serious economic and organizational obstacles, which from the very beginning of the Second Polish Republic presented a barrier that significantly limited access to education for many children and young people. The Constitution of the Republic of Poland of March 17, 1921 (Journal of Laws of 1921, No. 44, item 267) in Chapter V „Universal citizenship rights and obligations” formulated a wide catalog of personal rights. Regulations as to the right to education are set out in several articles. Importantly, however, the right to education was not included in the context of „subjective rights” but was a manifestation of the implementation of the social tasks of the state (Kierznowski, 2017). Article 118 of the Constitution imposed compulsory schooling in elementary school. Detailed issues, such as the time, scope and method of receiving this education, were to be determined by a separate law. Art. 119, in turn, announced free education in public schools and state scholarships for poor yet talented high school and university students. Moreover, the March Constitution referred to the issue of establishing and running schools, teaching and conducting scientific research. Art. 110 of the Constitution confirmed the equality of rights of national, religious and language minorities to establish schools and other educational institutions and to use their own language and religion in accordance with their beliefs. Whereas Art. 117 provided for the freedom of scientific research and announcement of its

results, as well as the right to establish and run schools and educational institutions by all citizens, provided that certain statutory requirements are met. Art. 94, imposing an obligation on parents to raise their children as righteous citizens and to provide them with the right conditions to receive education at least at the primary school level, was important in this regard. Moreover, Art. 120 provides for compulsory religion teaching in public schools providing education for young people under 18 years of age.

Referring to the provisions of the Constitution regarding the right to education, special attention should be paid to significant difficulties and restrictions that occurred during the interwar period in the context of implementing the principle of free education. This was largely fiction. For many families, the need to pay for education was a barrier preventing sending children to school, especially in rural environments. Even more so, high-school level education was available to a small number of young people. This resulted in a high level of illiteracy among the public. According to Norman Davies's findings, Poles who could read and write made up only 44% of the total population of the Second Polish Republic (Davies, 2006). With this in mind, it should be noted that the broad constitutional regulations regarding the right to education did not match the reality and the actual capabilities of the education system during the Second Polish Republic. Financial difficulties in education, a high percentage of illiteracy, or staff shortages among teachers, combined with the fictional nature of the principle of free schooling constituted a barrier that significantly limited the possibility of implementing constitutional principles (Kierznowski, 2017).

Constitution of April 23, 1935

The May Coup made by Józef Piłsudski and his supporters on May 12–15, 1926 had initiated far-reaching changes towards the centralization of power and building an authoritarian system in the state. The Constitution of April 23, 1935 was in line with these trends, while rejecting many of the basic assumptions of the March Constitution. It did not contain a separate chapter on civil rights and obligations; however, it upheld part of the provisions from the previous Constitution. In accordance with art. 81 item 2 of the April Constitution, art. 99, 109–118 and 120 of the March Constitution was left in force. Therefore, compulsory schooling in terms of public primary school, the right to establish schools (also by national, religious and language minorities) and compulsory

religious education in schools run by public entities were maintained. However, the principle of free schooling was abandoned. Notwithstanding this, it should be emphasized that also during the period of the April Constitution the problems of the education system, which were mentioned earlier, were still present, particularly including financial difficulties, illiteracy or limited access to the education system for children and young people from low-income families.

Constitution of July 22, 1952

Following the end of World War II, Poland found itself in the block of states subordinated to the USSR. This marked the beginning of the construction of a socialist state based on the Soviet model. Based on Marxist-Leninist ideology, with its monopolistic power of the communist party (PZPR), centrally controlled economy, as well as politicized and repressive judicial bodies, this system violated basic human rights in many areas and embodied many features of a totalitarian state (Klimek, 2009). In many cases, the constitutional and statutory guarantees of human rights were fictitious and were not observed in the political and systemic reality of the Polish People's Republic. The Constitutional Act of February 19, 1947 on the structure and scope of activities of the highest organs of the Republic of Poland (Journal of Laws of 1947, No. 18, item 71), the so-called Small Constitution, referring to the principles of the PKWN Manifesto of July 22, 1944, did not include provisions regarding the right to education. Instead, they were included in the Constitution of the Polish People's Republic of July 22, 1952. (Journal of Laws of 1952, No. 33, item 232). Among the primary features of the collectivist model on which the Constitution of the People's Republic of Poland was based, Krzysztof Motyk lists: 1) anti-individualistic character – giving priority to the interests of the state, rather than of individuals; 2) relativistic concept of human rights – emphasis on one's human rights as a citizen; 3) emphasis on positive rights – emphasis on economic and social rights, with simultaneous negation of political and civil rights, or reducing them to fiction; 4) bypassing formal guarantees of human rights and emphasizing material guarantees (Motyk, 1999).

The Constitution of the Polish People's Republic formulated the catalog of personal rights in Chapter VII „Basic Civil Rights and Obligations”, in the final part of the document. According to Adam Szymaniak, this fact should be interpreted as an indication of the subordination of human rights on previous-

ly formulated primary principles of the socialist state (Szymaniak, 2001). An additional manifestation of this concept was the provision of art. 57, according to which „by consolidating and multiplying the accomplishments of the working people, the Polish People’s Republic strengthens and extends the rights and freedoms of citizens.” In Szymaniak’s opinion, this provision confirmed „a directive and a top-down way of explicating the essence of civil liberties, according to which human rights came from the state authorities” (Szymaniak, 2001).

Art. 63 (Article 73 in the 1976 consolidated text) emphasized the socialist state’s concern for the development of education „based on the achievements of leading human thought and progressive Polish thought – education at the service of the nation”. The Constitution of the Polish People’s Republic declared the right to education in art. 61 item 1 (following 1976 amendment, it was art. 72 item 1). According to it, the right to education was to be ensured by: 1) public, free and compulsory primary schools; 2) constant expansion of public and vocational secondary education and higher education; 3) state aid in raising the qualifications of citizens employed in industrial plants and other work centers in cities and in the countryside; 4) system of state scholarships, development of dormitories, boarding schools and dormitories as well as other forms of material assistance for children of workers, working peasants and intelligentsia.” However, the act of 10 February 1976, amending the Constitution of the Polish People’s Republic (Journal of Laws of 1976, No. 5, item 29), Art. 72 item 2 provided that the right to education is being increasingly provided by: 1) free education; 2) public and compulsory primary schools; 3) popularization of secondary education; 4) development of higher education; 5) state aid in raising the qualifications of citizens employed in industrial plants and other work centers in cities and in the countryside; 6) system of state scholarships, development of dormitories, boarding schools and dormitories as well as other forms of material assistance for children of workers, working peasants and intelligentsia.” One should also mention Art. 68 of the 1952 Constitution (Article 80 following the amendment of 1976), declaring taking care of the education of young people and providing them with the widest opportunities for development.

Adam Szymaniak rightly observes that the nature of human rights formulated in the Constitution of the Polish People’s Republic was determined by their inclusion in the „socialist concept of human rights” (Szymaniak, 2001). That is why, as in the case of other civil rights and freedoms, the assumptions of

the PRL Constitution as regards the right to education should be seen more as slogans that are part of socialist propaganda, and not as actual subjective rights (Kierznowski, 2017). Human rights in the PRL Constitution were included as relative rights, derived from positive law enacted by the state (Dziobek-Romański, 1999). It should also be noted that civil rights and freedoms set out in the Constitution of the Polish People's Republic referred to Polish citizens only.

Constitution of April 2, 1997

Political and systemic changes initiated after the elections of June 4, 1989 caused the collapse of the communist regime. The construction of democratic state structures was, however, a long and complex process and resulted in the need to revise many of the previous political principles. The Act of December 29, 1989 on the amendment to the Constitution of the Polish People's Republic (Journal of Laws of 1989 No. 75, item 444) did not refer directly to the issue of civil rights and obligations (including the right to education), but it broke away from the totalitarian model of the state. Among the key areas of this transformation on which the assumptions of the Constitutional Amendment were based, Jacek Sobczak points out the following: establishing a democratic state of law in place of a socialist state; establishing the state system based on the principle of national sovereignty in place of the current principle of sovereignty of working people of cities and villages; introducing the principle of political pluralism in place of the leading role of the communist party; formulating the principle of economic freedom instead of a planned, centrally controlled economy; establishing the principle of equal protection and inviolability of all forms of property in place of dominance and special protection of state property; establishing a broad territorial self-government in place of the principle of democratic centralism based on the system of local national councils (Sobczak, 2002).

The Constitutional Act of 17.10.1992r. on mutual relations between the legislative and executive authorities in the Republic of Poland and on local government, the so-called Small Constitution (Journal of Laws of 1992 No. 84, item 426), Art. 77, maintained in force part of the provisions of the PRL Constitution, also including Art. 72 regarding the right to education. However, Sylwia Jarosz-Żukowska and Łukasz Żukowski draw attention to the fact that, despite the change in the political background, and despite the international

obligations binding Poland, still under the Small Constitution, the subjective scope of the right to education was related to Polish citizens only (Jarosz-Żukowska and Żukowski, 2014).

The Constitution of the Republic of Poland was adopted on April 2, 1997. (Journal of Laws of 1997, No. 78, item 483, as amended). In accordance with art. 2 of the Constitution „The Republic of Poland is a democratic state of law, implementing the principles of social justice.” In light of the constitutional assumptions, the structure of the Republic of Poland is to be based on respect for freedom and justice, on the cooperation of authorities (legislative, executive and judicial) and on social dialogue. Unlike previous Constitutions, the source of human rights was not the will of the state, but the dignity of a human person. In accordance with art. 30 „The inherent and inalienable human dignity is a source of human and citizen freedoms and rights. It is inviolable and respecting and protecting it is the responsibility of the public authorities.” At the same time, this is a direct reference to the concept of natural human rights.

In the 1997 Constitution, human rights have already been included in Chapter II „Human and citizen freedoms, rights and duties”. The right to education is defined in art. 70. Importantly, this right was granted regardless of the citizenship criterion, and thus also to foreigners residing in the Polish Republic. Art. 70 item 1 emphasizes every person’s right to education, while indicating the obligation to receive it until 18 years of age. The principle of free education in public schools is included in art. 70 item 2. An exception to this rule may be the possibility of providing „certain educational services by public universities for payment”. Art. 70 item 3 includes guarantees for parents regarding the freedom to choose education in private schools for their children. Moreover, the right of citizens and institutions to establish schools at all levels, i.e. primary, secondary and higher education, and educational institutions was indicated, with detailed rules for their functioning and funding, as well as pedagogical supervision set out in a separate act. Art. 70 item 4, in turn, indicates the obligation of public authorities to ensure universal and equal access to education for all citizens. To this end, the creation and support of individual financial and organizational assistance systems for pupils and students was announced. Article 70 item 5 ensures the autonomy of universities on the principles set out in a separate act. Helena Babiuch also points out the close relationship between this constitutional guarantee of the right to education and other regulations contained in the 1997 Constitution, including: the right

of parents to provide their children with moral and religious guidance and teaching in accordance with their own beliefs (Article 53 item 3), the admissibility of teaching religion at school (Article 53 item 4), the neutrality of public authorities in terms of religious, ideological and philosophical beliefs (Article 25 item 2) and the freedom of teaching and research (Article 73), as well as: the constitutional guarantee of the protection of children's rights (Article 72), the right to take into account the degree of maturity of a child in the process of raising them (Article 48), freedom of conscience and religion as well as the child's beliefs (Article 48), freedom of expression and obtaining and spreading information (Article 54), the principle of respect for the dignity of a human being (Article 30), the principle of equality and the prohibition of discrimination for any reason (Article 32), including on grounds of one's gender (Article 33) (Babiuch, 2008). It should be emphasized that, unlike earlier acts of this rank, the 1997 Constitution explicitly defines the means of protecting the freedoms and rights it includes (Articles 77-81). Therefore, a citizen whose rights set out in the Constitution have been violated has the following options: pursuing them in court; lodging a complaint to the Constitutional Tribunal regarding the constitutional review of laws or other legal acts based on which their rights or freedoms were determined by a court or public administration body; or file a request with the Ombudsman for help in protecting their rights or freedoms violated by public authorities (Articles 77-81 of the Constitution).

Summary

The changing political background in Poland in the 20th century exerted a significant impact not only on the state system, but also on the shape of the Constitution and other legal standards. They also had a significant impact on the issue of constitutional guarantees regarding the right to education. As the first act of this rank in reborn Poland, the March Constitution of 1921 was a manifestation of a liberal approach to the issue of human rights. The broad constitutional guarantees regarding the right to education have largely not been fully realized (particularly the postulate of free access to education). The April Constitution adopted as part of a centralized, authoritarian state did not pay much attention to the issue of human rights. However, it upheld part of the provisions of the 1921 Constitution. However, the difficult political, economic and social situation during the Second Polish Republic did not favor building

an education system that would ensure the implementation of constitutional provisions at the appropriate level. This resulted in major neglect in this regard, including the widespread illiteracy among Polish society. Following World War II, Poland found itself in the block of communist states subordinated to the USSR. The 1952 Constitution of the Polish People's Republic represented a collectivist model of human rights. They were relative in nature and resulted from the will of the state. Despite extensive constitutional declarations, human rights were commonly being violated during the communist period. The Constitution perceived the right to education as part of the social tasks of the state, not as a subjective right. On the other hand, one of the significant achievements of the Polish People's Republic involved providing free access to education (as opposed to the period of the Second Polish Republic) and eliminating illiteracy.

The period of political transformation initiated in 1989 brought about major changes regarding the concept of human rights protection in Poland. The Constitution of the Republic of Poland of 1997 contains the most extensive catalog of human rights compared to previous constitutional acts, including the widest regulation of the right to education. Unlike previous basic laws, this one derives human rights from the dignity of the human being. Its shape was significantly affected by international standards in the area of human rights, particularly documents of the United Nations and the Council of Europe. The right to education is understood as the subjective right of a human being, and ensuring the possibility of exercising it is one of the most important tasks of public authorities (government and self-government administration).

Abstract: The right to education is one of the most crucial human social rights. The aim of the paper is to present the evolution of the perception of this right in the 20th century Polish Constitutions. The Constitutions and their catalogue of human rights (including the right to education) were decisively influenced by the changes in the 20th century's political background. The 1921 Constitution, which represented the liberal model of human rights, regulated the right to education to a fairly large extent. Whereas the 1935 Constitution was in line with the concept of building a centralized state and ignored the issue of human rights guarantees, maintaining only a part of the previous Constitution's provisions. The communist Constitution of 1952 contained quite extensive guarantees regarding the right to education. However, it included

human rights not as subjective rights of a human being but as an element of the social tasks of the state. One significant achievement of the PRL period was the elimination of illiteracy, which had been quite common in the Second Polish Republic. However, in a totalitarian state, respect for human rights was not a priority to the communist authorities, and history provides numerous examples of violations. Following a period of political transformation initiated in 1989, the perspective of the human rights concept has gradually changed. In the 1997 Constitution, human rights are derived from the dignity of a human being, and the guarantees it contains regarding the right to education are the widest in comparison with the previous constitutions of the 20th century.

Keywords: Constitutions, human rights, science, right to education

Streszczenie: Prawo do nauki jest jednym z najważniejszych praw społecznych człowieka. Artykuł ukazuje ewolucję postrzegania tego uprawnienia w konstytucjach polskich w XX wieku. Decydujący wpływ na treść Konstytucji oraz na zawarty w nich katalog praw człowieka (w tym także prawa do nauki) miały zmieniające się w XX wieku uwarunkowania polityczno-ustrojowe. Konstytucja z 1921 roku, reprezentująca liberalny model praw człowieka, w dość szerokim zakresie regulowała kwestię prawa do nauki. Konstytucja z 1935 roku natomiast wpisywała się w koncepcję budowy państwa scentralizowanego i pomijała kwestię gwarancji praw człowieka utrzymując w mocy jedynie część postanowień wcześniejszej Konstytucji w tym zakresie. Komunistyczna Konstytucja z 1952 roku zawierała dość szerokie gwarancje dotyczące prawa do nauki. Prawa człowieka ujmowała jednak jako element zadań socjalnych państwa, a nie jako prawa podmiotowe. Znaczącym osiągnięciem okresu PRL była likwidacja analfabetyzmu, dość powszechnego w II Rzeczypospolitej. Jednakże w warunkach funkcjonowania państwa totalitarnego poszanowanie praw człowieka nie było priorytetem władz komunistycznych, a historia dostarcza licznych przykładów ich naruszania. Po okresie transformacji ustrojowej zapoczątkowanej w 1989 roku zmieniło się spojrzenie na koncepcję praw człowieka. Konstytucja z 1997 roku wywodzi je z godności osoby ludzkiej, a zawarte w niej gwarancje dotyczące prawa do nauki są najszerze w porównaniu z poprzednimi konstytucjami XX wieku.

Słowa kluczowe: Konstytucje, prawa człowieka, nauka, prawo do nauki

References

- Babiuch, H. (2008). Konstytucyjny charakter i zakres ochrony prawa dziecka do nauki. *Zeszyty Naukowe Państwowej Wyższej Szkoły Zawodowej im. Witelona w Legnicy*, 4, pp. 3–19.
- Davies, N. (2006). *Boże igrzysko. Historia Polski*. Kraków: Wydawnictwo ZNAK.
- Deklaracja Praw Dziecka z 20 listopada 1959r. Retrieved from: <http://libr.sejm.gov.pl/tek01/txt/onz/1959.html>.
- Dziobek-Romański, J. (1999). Prawa człowieka w Konstytucji RP z 2 kwietnia 1997 roku na tle Konstytucji PRL z 22 lipca 1952 roku. *Roczniki Nauk Prawnych*. 1, pp. 143–154.
- Europejska Karta Społeczna z 18 października 1961r. (Dz. U. z 1999r., nr 8, poz. 67).
- Grzejdziak- Przybyłowicz, A. (2017). Prawo do nauki. Prawa dziecka-ucznia. *Studia Prawa Publicznego*. 4, pp. 95–127.
- Jarosz- Żukowska, S., Żukowski, Ł. (2014). Prawo do nauki i jego gwarancje. In: M. Jabłoński (red.), *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym*, (pp. 631–658). Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego.
- Karta Praw Podstawowych Unii Europejskiej z 7 grudnia 2000r. Retrieved from: <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A-12012P%2FTXT>.
- Kierznowski, Ł. (2017). Historia prawa do nauki w polskich konstytucjach. *Miscellanea Historico-Juridica*. 2, pp. 159–173.
- Klimek, M. (2009). Samorząd terytorialny w Polsce w latach 1944–1950. *Przegląd Prawno-Ekonomiczny*. 6, pp. 30–39.
- Konstytucja Polskiej Rzeczypospolitej Ludowej z 22 lipca 1952 r. (Dz. U. z 1952 r. Nr 33, poz. 232).
- Konstytucja Rzeczypospolitej Polskiej z 17 marca 1921 r. (Dz. U. z 1921 r. Nr 44, poz. 267).
- Konstytucja Rzeczypospolitej Polskiej z 23 kwietnia 1935 r. (Dz. U. z 1935 r. Nr 30, poz. 227).
- Konstytucja Rzeczypospolitej Polskiej z dn. 2 kwietnia 1997r. (Dz. U. z 1997 r. Nr 78, poz. 483).
- Konwencja o Prawach Dziecka z 20 listopada 1989r. Retrieved from: <https://brpd.gov.pl/konwencja-o-prawach-dziecka>.
- Międzynarodowy Pakt Praw Gospodarczych, Społecznych i Kulturalnych z 16 grudnia 1966 r. Retrieved from: <https://amnesty.org.pl/wp-content/uploads/2016/04/Miedzynarodowy-Pakt-Praw-gosp-spol-kult.pdf>.
- Międzynarodowy Pakt Praw Obywatelskich i Politycznych z 16 grudnia 1966r. Retrieved from: https://amnesty.org.pl/wpcontent/uploads/2016/04/Miedzynarodowy_Pakt_Praw_Obywatelskich_i_Politycznych.pdf.

- Motyka, K. (1999). *Prawa człowieka. Wprowadzenie. Wybór źródeł*. Lublin: Wydawnictwo „Morpol”.
- Powszechna Deklaracja Praw Człowieka z 10 grudnia 1948r. Retrieved from: http://www.unesco.pl/fileadmin/user_upload/pdf/Powszechna_Deklaracja_Praw_Czlowieka.pdf.
- Protokół dodatkowy nr 1 do Europejskiej Konwencji Praw Człowieka z 20 marca 1952 r. (Dz. U. z 1995 r., nr 36, poz. 175).
- Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, Paryż 1974. Retrieved from: http://portal.unesco.org/en/ev.php-URL_ID=13088&URL_DO=DO_TOPIC&URL_SECTION=201.html.
- Sobczak, J. (2002). Konstytucyjne podstawy reform samorządowych w Polsce. In: S. Michałowski (ed.), *Samorząd terytorialny III Rzeczypospolitej. Dziesięć lat doświadczeń* (pp. 33–39). Lublin: Wydawnictwo UMCS.
- Szymaniak, A. (2001). *Prawa obywatelskie w konstytucjach z 1952 r. i 1997 r. Analiza porównawcza. Ruch Prawniczy, Ekonomiczny i Socjologiczny*. 3, pp. 31–48.
- Ustawa konstytucyjna z 17.10.1992 r. o wzajemnych stosunkach między władzą ustawodawczą i wykonawczą Rzeczypospolitej Polskiej oraz o samorządzie terytorialnym (Dz. U. z 1992 r. Nr 84, poz. 426).
- Ustawa konstytucyjna z 19 lutego 1947 r. o ustroju i zakresie działania najwyższych organów Rzeczypospolitej Polskiej (Dz. U. z 1947 r. Nr 18, poz. 71).
- Ustawa z 10 lutego 1976 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej (Dz. U. z 1976 r., nr 5, poz. 29).
- Ustawa z 14 grudnia 2016 r. Prawo oświatowe (Dz. U. z 2019 r., poz. 1148).
- Ustawa z 2 sierpnia 1926 r. o zmianie Konstytucji z 17 marca 1921 r. (Dz. U. z 1926 r. Nr 78, poz. 442).
- Ustawa z 29 grudnia 1989 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej (Dz. U. z 1989 r. Nr 75, poz. 444).
- Ustawa z 8 marca 1990 r. o zmianie Konstytucji Rzeczypospolitej Polskiej (Dz. U. z 1990 r. Nr 16, poz. 94).
- Wyrok Trybunału Konstytucyjnego z 8 listopada 2000 r., SK 18/99 (Dz. U. z 2000 r., Nr 101, poz. 1091).

Date of the submission of article to the Editor: 15.09.2019

Date of acceptance of the article: 27.11.2019