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The Right of the Child to Decent Social Conditions and Education

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1. Social rights of the child

The history of rights of the child is not so distant. The social and political changes in Europe at the end of the 18th century and then the rise of capitalism and industrial development resulted in a twofold approach to the child: on the one hand, the child was a right holder, and on the other hand their capabilities were exploited. Children were often physically exploited, badly treated, forced to work and contribute through it to their maintenance. Remaining under the authority of their parents or legal guardians children were and still are required to give them their obedience.¹

In the 20th century the Geneva Declaration,² adopted by the General Assembly of the League of Nations in 1924, was the first document on

¹ See Art. 95 of The Family and Guardianship Code. In Poland, it was only in 2010 when the reference to the use of corporal punishment of children was deleted from the Family and Guardianship Code by introducing Art. 96,¹ see: The Family and Guardianship Code, 25 II 1964, *Journal of Laws* of 1964, no. 9, item 59 with further amendments (last amendment: *Journal of Laws* of 2014, item 1188).

² See: http://ms.gov.pl/Data/Files/_public/ppwd/akty_prawne/onz/deklaracja_praw_dziecka.pdf (accessed 12.10.2014). The English text available at: http://www.unicef.org/vietnam/01_-_Declaration_of_Geneva_1924.PDF

the rights of the child. Although at that time social rights were not yet discussed, the text of the Declaration almost completely refers to them. It was stated that mankind should provide the child with all the best it has and it was accepted that regardless of race, nationality and creed it is its duty to provide the child with means for the child's normal development, both physical and spiritual; moreover, "The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured; 3. The child must be first to receive relief in times of distress; 4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation; 5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men."³ The issue of protecting children against economic exploitation was present a few years before, however the work on protection of rights of the child was stopped due to the outbreak of the Second World War.⁴ As early as in Convention no. 5 of the International Labour Organization (ILO) of 1921 fixing the minimum age for admission of children to industrial employment⁵ Art. 2 states that "Children under the age of 14 years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed." The issue of the protection of rights of children was also referred to in ILO Convention No. 6 concerning the night work of young persons employed in industry.⁶ Article 2 states that: "Young persons under 16 years of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed."⁷

³ Ibidem.

⁴ A. SZARKOWSKA: *Dziecko w kontekście historycznym*, p. 13, see: http://www.iceow.uwb.edu.pl/pliki/as_dwkh.pdf (accessed 23.12.2014).

⁵ The Convention was adopted on November 28, 1919 in Washington. It entered into force on 13 June 1921, was amended in 1937 with Convention No. 59 and in 1973 with Convention No. 138, withdrawn in 1978, see: http://www.mop.pl/html/polska_w_mop/konwencje_polska.html (accessed 25.10.2014). The English text available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312150

⁶ The Convention was adopted on 28 November 1919 in Washington. It entered into force on June 13, 1921, it was revised in 1948 with Convention No. 90, see: http://www.mop.pl/html/polska_w_mop/konwencje_polska.html (accessed 25.10.2014).

⁷ "Young persons over the age of 16 may be employed during the night in the following industrial undertakings on work which, by reason of the nature of the process, is required to be carried on continuously day and night:

(a) manufacture of iron and steel; processes in which reverberatory or regenerative furnaces are used, and galvanising of sheet metal or wire (except the pickling process);

Also in the Universal Declaration of Human Rights of 10 December 1948 in Art. 25 there are some references to social rights and education: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Whereas Art. 26 states that: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”⁸ In 1959 the Declaration of the Rights of the Child⁹ was adopted and though it consisted only of 10 articles, it included social rights and social security of children. It was only 30 years later that the Convention on the Rights of the Child,¹⁰ adopted in 1989, had some new, more detailed rights added, was further extended to 54 articles and was addressed to children and states and people responsible for the care of the children.

The inherent dignity of the human person is a source of rights of each human being. It means that these rights derive from natural law and they are not granted by the state. Therefore, they are natural, independent of the will of the state authorities and each person is entitled to them by birth. They are inalienable, no person may waive these rights, they are also inviolable and it is a duty of the state to guarantee their realization and protection. Moreover, they are universal and concern every person

(b) glass works;

(c) manufacture of paper;

(d) manufacture of raw sugar;

(e) gold mining reduction work.” The English text available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312151:NO

⁸ See the text of the Declaration at: http://www.unic.un.org.pl/prawa_czlowieka/dok_powszechna_deklaracja.php (accessed 25.10.2014). The English text available at: <http://www.supremecourt.ge/files/upload-file/pdf/act3.pdf>

⁹ See the text of the Declaration at: http://ms.gov.pl/Data/Files/_public/ppwd/akty_prawne/onz/deklaracja_praw_dziecka.pdf (accessed 25.10.2014). The English text available at: <http://www.unicef.org/malaysia/1959-Declaration-of-the-Rights-of-the-Child.pdf>

¹⁰ See the text of the Convention at: http://www.unicef.org/magic/resources/CRC_polish_language_version.pdf (accessed 25.10.2014), *Journal of Laws* of 1991, No. 120, item 526. The English text available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. Janusz Korczak (1878/79-1942) contributed substantially to the development of the rights of the child.

without exception. Every child is entitled to the rights of the child just like every adult is entitled to human rights. The child is a human person with dignity, therefore he is entitled to all human rights, regardless of his biological or mental immaturity, that is the age and being subject to the authority of parents, he requires special treatment and care, therefore he is entitled to such rights. No child can be deprived of these rights. It needs to be emphasized that there is no relation between possessing these rights by the child and fulfilling responsibilities or being obedient, that is the child does not have to earn these rights. The rights of the child and his responsibilities are two different issues. The child's entitlement to rights does not depend on performing or not performing his responsibilities (though he should do so). Upon his birth the child is given the rights, which do not have to be earned by satisfying any kind of requirements. The dignity of the human person is the only source of these rights.

But the question arises, at what point the child is entitled to social rights and when their applicability ends? Pursuant to Art. 1 of the Convention: "[...] a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Article 2 (1) of the Polish Act on the Ombudsman for Children states that: "[...] a child is every person from the moment of conception until the age of majority."¹¹ It should be recognized that the beginning of these rights is the beginning of the child's life from the moment of conception, whereas the end is marked by reaching the age of maturity.

The Convention on the Rights of the Child adopted by the United Nations General Assembly on November 20, 1989, ratified by Poland¹² on July 7, 1991, in many articles, especially from no. 22 to no. 32¹³ contains regulations on social rights. First of all, the Convention regulates the rights of the disabled child, either mentally or physically, so that he can enjoy a full and normal life in conditions which guarantee dignity, promote self-reliance and facilitate his active participation in social life. Moreover, the disabled child has the right to education, training, health care and rehabilitation services, preparation for employment and recreation opportunities (Art. 23). The Convention emphasizes the right of every child to the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health.¹⁴ It also provides the child with the right to social security, including social insurance. Moreover, the child is entitled to a standard of living adequate for his physical, mental, spiritual,

¹¹ See *Journal of Laws* no. 6, item 69 of 6 January 2000. The English text available at: http://brpd.gov.pl/sites/default/files/ustawa_o_rpd_en.pdf

¹² See *Journal of Laws* of 1991, no. 120, item 526.

¹³ See articles from 23 to 32, in particular Art. 26, of the Convention.

¹⁴ Art. 24 of the Convention.

moral and social development (Art. 27). Articles 28 to 30 of the Convention include the regulations connected with the right to education on the basis of equal opportunity, such as primary education that is compulsory and free of charge, and emphasizes that the education should develop the child's personality, talents and mental and physical abilities to their fullest potential. The states with ethnic, religious or linguistic minorities or persons of indigenous origin cannot deny the child that belongs to such minorities or the child of indigenous origin the right to have and enjoy their own culture, to confess and practice his own religion or to use his own language, together with other members of his group.¹⁵

Social rights are these human rights that are related to employment, social security, health, family life, participation in cultural life and education. There are several groups of these rights: (1) workers' rights connected with the performed job — including prohibition of forced labour, prohibition of discrimination in employment, the right to decent working conditions, fair wages and equal remuneration for work of equal value, the right to organize oneself and the right to strike; (2) the right to social security and medical protection — related to the right to social security in the event of sickness, old age, disability, unemployment and the right to social assistance; (3) family rights — including the right of the family to legal, social and economic protection, the right to protection of maternity, the right of children to protection against all forms of exploitation; (4) the right to education — including the right to free education at primary level, access to education at a higher level, the right to social assistance in order to facilitate access to education.¹⁶ The Convention defines not only the rights of the child, the rights and duties of parents or legal guardians but also the duties and responsibilities of the state towards children in the following areas: providing assistance for children and the family, in education, in health care, social security and the protection of these rights. Social rights belong to the so-called second generation of rights. These include economic, social and cultural rights, which are these rights that provide for physical and mental development and social security of an individual. They also impose on the state economic and social responsibilities towards the citizen.¹⁷ Social rights include in particular: the right to social security benefits and insurance, the right to health and health services, the right to rest, the right to social security. The adequate pro-

¹⁵ Art. 30 of the Convention.

¹⁶ Ministry of Labour and Social Policy in Poland, see: <http://www.mpips.gov.pl/spoleczne-prawa-czlowieka/> (accessed 25.10.2014).

¹⁷ Written sources of social rights include International Covenant on Economic, Social and Cultural Rights of 1966, see: http://www.hfhrpol.waw.pl/pliki/Miedzynarodowy_Pakt_Praw_Gospodarczych_Spolecznych_i_Kulturalnych.pdf (accessed 20.10.2014).

tection of these rights is the state's duty. In the case of individual's rights it is necessary for their holder to make the protection of these entitlements possible and be realized without any insurmountable difficulties, following the idea that: [...] *parum esset iura condere, nisi, qui ea tueatur, existat*.¹⁸

The rights of the child are inextricably linked with the rights of the family because the child is born into and grows in the family. Hanna Waśkiewicz reminds that human rights are the rights to which a person is born, bringing them to society. They are universal, inalienable and inviolable. The rights of the family form a special group of human rights. The state cannot repeal, change, limit or suspend them. It is the task of the state to protect the rights of the family, that is to create such conditions in which family members will be able to exercise their rights freely. In addition, the state is a subject of responsibilities correlative to the rights of the family. The state does not accomplish its purpose if, for example, its legislation undermines the right of the family to exist by allowing divorces or it refuses new family members the right to life, or if the parents are denied the right to decide about the direction of their children's upbringing or education.¹⁹

2. Fairness of social conditions for the child

In the Polish language the word “decent” means appropriate, adequate, fair. We can talk about decent social conditions for the child in a situation when the child has the opportunity to develop in appropriate conditions which ensure his access to and use of such rights as social security, health care,²⁰ recreation or education. Fairness of social conditions for the child depends primarily on fairness of the wage of his parents or legal guardians and their standard of living. The size of the wage for parents' work has a significant impact on the child's development and exercise of his rights. Teresa Liszcz notes that a decent, that is adequate, standard of living designated by family wage essentially corresponds to

¹⁸ See *Extravagantes Communes* 2,1,1. Also: Pree H.: “Das Recht auf die Heilsgüter (c. 213 CIC).” *Heiliger Dienst* 4 (1994), p. 288.

¹⁹ H. WAŚKIEWICZ: “Prawa człowieka a prawa rodziny.” In: *Chrześcijanin w świecie* 139 (1985) no. 4, pp. 38—55.

²⁰ On the protection of child's health see more in: E. RESPOND: “Prawne aspekty ochrony zdrowia dzieci w Polsce.” *Roczniki Nauk Prawnych* 24 (2014), no. 3.

the level of a modest life.²¹ In Poland the so-called social minimum, set by the Institute of Labour and Social Studies, is the expression of this level. In western countries, the term “minimal wage” is used to determine it in relation to the average wage or to the national income per capita.²² A social minimum should be understood as such low-level income that allows people to participate in social life, to integrate with it and not to fall into poverty. It is not de facto the poverty line but the line warning that below this limit there is a risk of poverty.²³ It is a model of meeting the needs at a generally low level but which is still sufficient to reproduce human vitality at each stage of his biological development, to possess and bring up children and to maintain a relationship with society. In the basic needs basket there are goods satisfying existential needs such as food, clothing, footwear, housing, health, hygiene and these which are used to perform work, for example local transport and communication, education (education and upbringing children), maintenance of family ties and social contacts and modest participation in culture. The basket includes three groups of needs: (1) municipal-consumption needs (food, housing, clothing, hygiene, health, transport and communications); (2) educational and cultural (upbringing, education, culture); (3) recreational and leisure (recreation, sport and tourism).²⁴

If parents' income does not allow them to satisfy needs enlisted in the basic needs basket, there may be a phenomenon of poverty. Poverty describes a situation in which a person does not have the necessary means to survive and to survive he must rely on the help of others.²⁵ It is defined in many different ways. It is commonly referred to as a state of various types of defects occurring to such an extent and of such size that a person cannot permanently satisfy his basic needs, he feels humiliated in his human dignity and there is a crisis of the development of his personality that cannot be overcome on his own and he needs some help to do so.²⁶

²¹ T. LISZCZ: “Prawo pracy a rodzina.” In: *Prawo pracy a rodzina. Układy zbiorowe pracy*. Scientific ed. IDEM. Warszawa 1996, p. 23.

²² See E. SZCZOT: “The Right to Work and Family Wage. Some reflections on Article 10 of the Charter of the Rights of the Family from the Polish Perspective.” In: *Ecumeny and Law* no. 2 (2014), pp. 203—220.

²³ See more in: P. KUROWSKI: *Koszyki minimum socjalnego i minimum egzystencji — dotychczasowe podejście* — https://www.ipiss.com.pl/wp-content/uploads/downloads/2012/08/rola_funk_min_soc_egz.pdf (accessed 25.10.2014).

²⁴ Ibidem.

²⁵ See ARCHBISHOP J. MICHALIK: *A Letter to the Clergy. „Ubóstwo kapłana realizacją Ewangelii.”* November 28, 2010, <http://www.mojepowolanie.pl/1886,a,ubostwo-kaplana-realizacja-ewangelii-list-do-kaplanow-abp-joz.htm> (accessed 23.9. 2014).

²⁶ L. DYCZEWSKI: “Kościół Katolicki wobec ubóstwa i ludzi ubogich,” pp. 370—380, In: *Polska bieda II. Kryteria. Ocena. Przeciwdziałanie*. Ed. S. GOLINOWSKA. Warszawa 1997.

Poverty understood in this way includes both economic and spiritual aspects. A poor person is both the one who has something to eat and wear as well as the one for whom the school corresponding to his talents is not available, or somebody who cannot cope with everyday tasks because of his disability or impairment, or somebody who is lonely or does not participate in public life. The analysis of the social range of poverty which was conducted in Poland at the beginning of the 1990s confirms that poverty affects mostly children and young people.²⁷ The opposite of decent conditions of life are indecent conditions, difficult for life and development, namely such conditions which do not allow for the proper development of the child and exercise of his or her rights. Difficult conditions are also these conditions that differ significantly from the average living conditions of the children in a given state. Therefore, it is the duty of each state to take action for the benefit of the children and their families in the areas of education, health care and social assistance. Pursuant to the regulation in Art. 44 of the Convention, the activities of social assistance undertaken for the benefit of children are an important element of reports submitted by each state to the United Nations Committee on the Rights of the Child.²⁸

The Constitution of the Republic of Poland in Art. 71 (1) defines the tasks of the state's social policy as follows: "The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances — particularly those with many children or a single parent — shall have the right to special assistance from public authorities [...]."²⁹ This provision

²⁷ Implementation of the right of the child to decent social conditions is particularly at risk in large families, families affected by unemployment, single-parent families and these families in which the responsibilities to maintain the family rest on one of the parents, and in dysfunctional families. In such families there is a greater risk of poverty. It is worth emphasizing the fact that in recent years even the work of two parents often cannot protect families from poverty. Cf. I. WÓYCICKA: Raport of 2007. *Walka z ubóstwem wśród dzieci oraz promocja ich integracji społecznej. Studium polityki państwa* — <http://ec.europa.eu/social/BlobServlet?docId=5164&langId=pl> (accessed 20.10.2014). In Poland in 2011 the number of people at risk of poverty or social exclusion amounted to 10.2 mln, representing 27.2% of the total population, to 24.2% on average in the EU, see: *Krajowy Program Przeciwdziałania ubóstwu i wykluczeniu społecznemu 2020. Nowy wymiar aktywnej integracji*. Ministry of Labour and Social Policy. Warszawa, May 2014 — isip.sejm.gov.pl/Download?id=WMP20140000787&ctype=2 (accessed 8.12.2014).

²⁸ See: OMBUDSMAN FOR CHILDREN: "Prawo dzieci do godziwych warunków socjalnych" — <http://brpd.gov.pl/aktualnosci/rzecznicz-prawo-dzieci-do-godziwych-warunkow-socjalnych> (accessed 25.10.2014).

²⁹ The Constitution of the Republic of Poland, March 2, 1997, *Journal of Laws* of 1997, no. 78, item 483 with further amendments. The English text available at: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

imposes on the state the obligation to provide assistance to families in a difficult financial situation, especially large and single-parent families. The principle of subsidiarity of the state and other public institutions towards the family means that the state supports the efforts of the family, yet it does not relieve the family in their efforts to provide a decent standard of living. In its socio-economic policy the state should seek to guarantee citizens the income which is sufficient to support the family and supplement with social benefits the income of those who cannot provide a decent standard of living with their income to dependant family members. The state should support parents in their efforts to properly secure social needs of children, as well as it should create social and family policy which is favourable for ensuring, to the greatest extent possible, the conditions for the child's life and development. Social rights set in the Constitution are only general indications, as the objectives of the state's activities. A full elaboration and detailed definitions of these are included in the statutory regulations. These rights do not directly create claims on the side of the citizens, particular claims against the state, but they impose on the state the obligation to take all necessary measures to implement these rights. This includes legal, political, economic or cultural activities.³⁰

Provisions of the Convention on the Rights of the Child define general standards for implementation of social rights of the child. The state which ratified the Convention is obliged to recognize the right of every child to a standard of living adequate for his physical, mental and social development. The primary responsibility to secure adequate conditions of living lies, within their capabilities, with parents and other people responsible for the child. Only if the parents, or others responsible for the child, are not able to secure adequate and decent conditions of living, necessary for the child's development, it is the duty of competent public institutions to provide children with adequate social conditions.

Article 27 of the Convention fully presents social rights of the child:

1. State Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capabilities, the conditions of living necessary for the child's development.

³⁰ OMBUDSMAN FOR CHILDREN: "Prawo dzieci do godziwych warunków socjalnych" — <http://brpd.gov.pl/aktualnosci/rzecznik-prawo-dzieci-do-godziwych-warunkow-socjalnych> (accessed: 25.10.2014).

3. State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. State Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in the State different from that of the child, State Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Articles 6 (2),³¹ 26 (1) and (2) of the Convention should also be considered.³² Children often bear consequences of situations which are without their fault. They should be more effectively protected against such situations because they are beyond their control. They take negative consequences of social changes with “the benefit of inventory,” for example structural changes in areas of the former state farms (PGR), unemployment, parents’ resourcelessness in life, or the presence of events beyond control (flood, fire) or life in poverty, in which case we can talk about the so-called transmission of poverty. In these situations children pay the highest price. The report submitted to the Ministry of Labour and Social Policy shows that in Poland since 2010 over 1,800 children were taken away from their parents due to poverty and impoverishment, resourcelessness in life, difficult living conditions, unemployment and many other factors which contribute to the phenomenon of poverty. As an example, in 2011 in foster families and institutions of various kinds there were over 95,000 of children. This number was higher than in 2005 mainly due to the increasing educational and care problems among children and

³¹ Art. 6: “1. State Parties recognize that every child has the inherent right to life. 2. State Parties shall ensure to the maximum extent possible the survival and development of the child.” Art. 24: “1. State Parties shall recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

³² “State Parties shall recognize for every child the right to benefits from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law. 2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for the benefits made by or on behalf of the child.”

young people as well as insufficient and ineffective support provided to parents.³³

3. The right to education

The right to education was included in Art. 28 paragraphs from a) to e) of the Convention on the Rights of the Child³⁴ which specifies that State Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity they will, in particular, make primary education compulsory and available to everyone. Earlier, the right to education was included in the International Covenant on Economic, Social and Cultural Rights of 1966 in Art. 13. Paragraph 1 of this article emphasizes the right of everyone to education, and that this education should be directed towards the full development of the human personality and the sense of its dignity, and should strengthen the respect for human rights and fundamental freedoms.

In Poland, after political changes in 1989, the Act of September 7, 1991 on the education system³⁵ was prepared and in the preamble it is stated that the school must provide each student conditions which are necessary for his growth, prepare him for performing family and civil responsibilities on the basis of the principle of solidarity, democracy, tolerance, fairness and freedom. Pursuant to Art. 1 of this act each citizen of the Republic of Poland is granted the right to education and children and young people are guaranteed the right to education and care, taking into

³³ See: http://www.csopoid.pl/odbieranie_dzieci_z_powodu_biedy.html (accessed 20.12.2014). Also research shows that in Poland over 500,000 of children do not get enough food, almost 450,000 do not have all textbooks and almost 600,000 do not go to the dentist's due to their poverty — the report of GUS (Central Statistical Office of Poland).

³⁴ Art. 28: "2. State 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. 3. State Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries."

³⁵ Ustawa o systemie oświaty z dnia 7 września 1991 r., *Journal of Laws* of 2004, no. 95, item 425 with further amendments.

account their age and developmental stage. The education system also provides support for the educational role of the family. Moreover, Art. 70 of the Constitution of the Republic of Poland of 1997 guarantees the right of each citizens to education and imposes the schooling obligation until 18 years of age. Education in public schools is free of charge and parents have the right to choose a school for their children.³⁶ However, in whole Europe and Poland there is a problem connected with a group of young people, the so-called NEETs. It is an acronym of English words “not in education, employment, or training.” Young people between 15 and 24 prematurely leave school, are unemployed and cannot benefit from trainings that could prepare them for work.³⁷ Therefore, new forms of schooling arise in the form of informal education.³⁸

The Education Development Strategy for Poland for years 2007—2013 indicates that the strategy is based on the assumption that as an integral system of schooling, education in Poland enables gaining knowledge and skills, upbringing, formation and promotion of attitudes.³⁹ Currently there is a new strategy, EUROPE 2020,⁴⁰ which emphasizes promotion of high-quality early care and education, including the focus on an individual approach to the needs of young children and an effective cooperation with

³⁶ The Constitution of the Republic of Poland, 2 IV 1997, Art. 70 (1) and (2), Journal of Laws of 1997, no. 78, item 483 with further amendments.

³⁷ According to the Report on tackling poverty and social exclusion issued by the Ministry of Labour and Social Policy in 2013 the biggest concern among older children and the youth (15—24) caused the phenomenon of being left outside education, training and work (the case of NEETs). In Poland the pre-estimated percentage of young people in this situation amounted to 11.6% in 2011, and it concerns mainly the youth aged 18—24 (only a few countries managed to reach less than 5%, e.g. Holland). The youth unemployment rate in Poland has been growing for several years, in the fourth quarter of 2012 it increased to 27.4%. Several countries managed to reduce this rate to less than 10% (Holland, Germany, Austria). The problem of poverty and exclusion affects particularly children and the youth. Cf. also: *Diagnoza społeczna 2013. Warunki życia i jakość życia Polaków*. Warszawa 2014. Eds. J. CZAPIŃSKI, T. PANEK, pp. 105—106.

³⁸ On informal education see: *Doświadczając uczenia. Materiały pokonferencyjne*, Warszawa 2005, http://www.frse.org.pl/sites/frse.org.pl/files/doswiadczac_uczenia_materiały_pokonferencyjne_pdf_90786.pdf (accessed 21.11.2014). Cf.: MINISTRY OF ECONOMY: *Krajowy Program Reform Europa 2020. Strategia na rzecz inteligentnego i zrównoważonego rozwoju sprzyjającego włączeniu społecznemu*, http://www.mg.gov.pl/files/upload/8418/EUROPA_PL.pdf (accessed 10.12.2014).

³⁹ *Strategia edukacji na lata 2007—2013*. Point 3.4: *Główne kierunki strategii edukacji*. In: *Edukacja w ramach Strategii Lizbońskiej. Wybór dokumentów*. Eds. D. BIS, I. SZEWCZAK. Lublin 2007, p. 68.

⁴⁰ See: MINISTRY OF NATIONAL EDUCATION: *Główne kierunki krajowej polityki edukacyjnej do roku 2020*, Warszawa, April 4, 2013, http://konfederacjalewiatan.pl/opinie/fundusze_europejskie/programowanie-perspektywy-2014-2020/_files/Projekty_UE/G_wne_kierunki_krajowej_polityki_educacyjnej_do_2020_MEN.pptx (accessed 10.12.2014).

the home environment and support for parents in caring for children. It is proposed to give all children aged 3 to 5 a site for preschool education and guarantee a smooth transition from preschool to school education. Promotion of early education should contribute to levelling the chances for education of children and a better development of their learning competencies. The strategic objective of the Social Capital Development Strategy sets out educational activities both in the area of supporting formal education in the field of teaching methods that encourage cooperation, creativity and communication and the development of democratic culture of the school, as well as supporting informal education and directing it towards cooperation, creativity and social communication.

The Report on tackling poverty and social exclusion showed that in Poland in 2005 children's access to kindergartens and nurseries was very poor. Only 20% of children aged 6 benefited from preschool care (14% in 2003). In urban areas the access of preschool children to care facilities is over twice higher than in rural areas, where only 11% of children benefited from such care. The worst access to kindergartens have children from neglected municipalities and disabled children, those for whom preschool education is most needed because of creating equal educational opportunities in the future.⁴¹ Recently, as regards the care provided by nurseries and preschool education, the rates have increased but they still remain at a level lower than in western countries. The report issued by UNICEF shows that, unfortunately, in Poland the number of nurseries is still too small because only about 3% of children aged 0—3 living in urban areas and a marginal percentage of children from rural areas can benefit from them. The situation was slightly improved with the introduction of new forms of care for preschool children. The access to childcare and education is better in the case of kindergartens where the enrollment rate, steadily increasing since 2005, amounted to 69.9% in the school year 2010/2011. However, it turns out that far more children from urban areas than from rural areas go to kindergartens and this disproportion, despite the overall growth of the rate, is still significant (in the school year 2010/2011 the enrollment rate was 83.6% in urban areas and 51.2% in rural areas).⁴²

The right to education was included in the Charter of Fundamental Rights of the European Union, adopted in Nice in 2000, in Art. 14. It was stated that everyone has the right to education and access to vocational and continuing training. Moreover, this right includes the possi-

⁴¹ I. WÓYCICKA: *Walka z ubóstwem wśród dzieci oraz promocja ich integracji społecznej. Studium polityki państwa* (Report: May 2007), <http://ec.europa.eu/social/BlobServlet?docId=5164&langId=pl> (accessed 20.10.2014).

⁴² *Dzieci w Polsce. Dane, liczby, statystyki*. Warszawa 2013 — <http://www.unicef.pl/Media/Files/Dzieci-w-Polsce.-Dane-liczby-statystyki> (accessed 15.12.2014).

bility to receive free compulsory education and the freedom to found, with due respect for democratic principles, educational establishments, and the right of parents to ensure education and teaching of their children according to their own religious, philosophical and pedagogical convictions. They are respected in accordance with national laws governing the exercise of such freedom and this right.⁴³ Moreover, as in previous documents, the Treaty of Lisbon of 2007, in Title XII on education, vocational training, youth and sport, Art. 165, states that the Union is to contribute to the development of quality education and encourage cooperation between Member States, and to support and, if necessary, supplement their activities.⁴⁴ All documents emphasize the role of quality education, they talk about upbringing that respects religious and philosophical convictions of parents and they emphasize the need for vocational and continuing training. However, currently there is a problem that education does not guarantee a job for young people and bettering their economic situation.

Children are defenseless, helpless and subordinate to the authority of adults. For this reason they should require special care and protection, manifested especially in the pro-family policy of the state. Article 71 of the Constitution of the Republic of Poland imposes such a pro-family direction of the policy. Moreover, there is a close relationship between the economic policy of the state, social policy and the quality of life of the family. The better condition of the family, the lower unemployment, decent wages of parents and a greater care of the state for developing the pro-family policy the greater likelihood that the right of the child to decent social conditions is preserved and better protected. It is in the interest of the state to care for better living conditions of its citizens and opportunities to implement their social rights because, as commonly believed, poor children need to be given a chance so that they do not become poor adults in the future.

Translated from Polish by ANNA BYSIECKA-MACIASZEK

⁴³ MINISTRY OF FOREIGN AFFAIRS. *Karta Praw Podstawowych Unii Europejskiej*. Warszawa 2001. Art. 14, points 1–3.

⁴⁴ “Traktat o funkcjonowaniu Unii Europejskiej.” In: *Prawo Unii Europejskiej wraz z indeksem rzeczowym*. 16th edition. Warszawa 2011, Art. 165 (2), 166.

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ELŻBIETA SZCZOT

The Right of the Child to Decent Social Conditions and Education

Summary

The article presents the genesis and sources of rights of the child. Every child is entitled to the rights of the child just like every adult is entitled to human rights. The child is a human person with dignity, therefore he or she is entitled to all human rights. Moreover, because of his biological and mental immaturity and being subject to the authority of parents the child requires special treatment and care. Social rights are these human rights that are related to employment, social security, health, family life, participation in cultural life and education. They include economic, social and cultural rights, which are these rights that provide for physical and mental development and social security of an individual. Rights of the child are inextricably linked with rights of the family because the child is born into and grows in the family. The Constitution of the Republic of Poland imposes such a pro-family direction of the policy in Art. 71. What is more, there is a close relationship between the economic policy of the state, social policy and the quality of life of the family. The better condition of the family, the lower unemployment, decent wages of parents and a greater care of the state for developing the pro-family policy the greater likelihood that the right of the child to decent social conditions is preserved and better protected.

ELŻBIETA SZCZOT

Le droit de l'enfant aux conditions sociales convenables et à la formation

Résumé

On a présenté dans le présent article la genèse et la source des droits de l'enfant. Les droits de l'enfant reviennent à chaque enfant, tout comme les droits de l'homme reviennent à chaque personne adulte. L'enfant est une personne humaine ayant la dignité de la personne et, pour cette raison, il a le droit de profiter de tous les droits de l'homme. En plus, étant donné son immaturité biologique et intellectuelle ainsi que le fait qu'il est sous la dépendance de ses parents, l'enfant demande un soin particulier. Les droits sociaux sont les droits de l'homme concernant le travail, la protection sociale, la santé, la vie familiale, la participation à la vie culturelle, la formation. Parmi ces droits on range les droits économiques, sociaux et culturels, c'est-à-dire ceux qui assurent à l'individu le développement physique et spirituel ainsi que la sécurité sociale. Les droits de l'enfant sont inséparablement liés aux droits de la famille parce que l'enfant naît et grandit au sein de la famille. L'article 71 de la Constitution de la République de Pologne requiert que la politique de l'État prenne en considération le bien de la famille. En plus, il existe un rapport étroit entre la politique économique, la politique sociale et la qualité de la vie des familles. Si la situation de la famille est meilleure, le chômage plus bas, les salaires des parents plus convenables et que l'État s'occupe mieux de la formation de la politique

familiare, la probabilité que le droit de l'enfant aux conditions sociales convenables et à la formation soit respecté et convenablement protégé augmente.

Mots clés : enfant, droits de l'enfant, droits sociaux, formation

ELŻBIETA SZCZOT

Il diritto del bambino a condizioni sociali e di istruzione dignitose

Sommario

Nell'articolo sono stati presentati la genesi e la fonte dei diritti del bambino. I diritti del bambino spettano a ciascun bambino come a ciascun adulto spettano i diritti dell'uomo. Il bambino è un essere umano che ha la dignità di persona, perciò gli spettano tutti i diritti dell'uomo. Inoltre il bambino per la sua immaturità biologica e intellettuale e la sottomissione all'autorità dei genitori richiede un'assistenza e una cura particolari. I diritti sociali sono quei diritti dell'uomo che riguardano il lavoro, la tutela sociale, la salute, la vita familiare, la partecipazione alla vita culturale, l'istruzione. Vi rientrano i diritti economici, sociali e culturali ossia quelli che garantiscono all'individuo la crescita fisica e spirituale nonché la sicurezza sociale. I diritti del bambino sono indissolubilmente legati ai diritti della famiglia in quanto il bambino nasce e cresce nella famiglia. Alla tendenza profamiliare della politica dello stato obbliga la Costituzione della Repubblica Polacca nell'art. 71. Inoltre esiste uno stretto legame tra la politica economica, la politica sociale realizzata e la qualità della vita delle famiglie. Migliore è la situazione della famiglia, più è basso il tasso di disoccupazione, i guadagni dei genitori dignitosi, maggiore è la cura per la formazione della politica profamiliare, allora è più probabile che il diritto del bambino a condizioni sociali e di istruzione dignitose venga mantenuto e venga tutelato adeguatamente.

Parole chiave: bambino, diritti del bambino, diritti sociali, istruzione.