



DEVELOPMENT OF CHILDREN'S RIGHTS IN POLAND – SELECTED ASPECTS

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JEL Category: **K36**

Abstract

Children's rights are human rights, they result from the personal dignity and uniqueness of the child as a person. They apply to every child, they cannot be stripped away or renounced. It also means that if a child has a right, the state must ensure that it can be exercised. Further, if the child has a certain right, it means that there must also be procedures to enforce it. The beginning of the international movement for the protection of children's rights dates back to 1874, when the first organization for the protection of children's rights, the New York Society for the Prevention of Cruelty to Children, was founded in the United States. In Europe, at a similar time, since 1880, international societies of criminologists, youth court judges, care for abandoned and homeless children were being established to work on relaxing the criminal law for minors or establishing educational and care facilities for children. It was in the 19th century when the rights of the child were discussed in Poland for the first time. Moral, religious, or customary norms regulated children's place in the community. However, the development of these rights was a long process that had started in Poland much earlier. The article aims to present selected historical situations affecting the development process and the current state of children's rights in Poland.

Keywords: *child, rights, freedoms, system, family, Children's Ombudsman.*

1 INTRODUCTION

In Poland, the rights of the child began to be discussed for the first time in the 19th century. The child is one of the basic subjects of the family, the status and importance of which have been included in the supreme legal act in force in Poland, which is the Constitution of the Republic of Poland. Poland also provides care and full protection of the family. That is why it is so

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important to know the legal basis defining the rights of children and the duties of guardians and institutions providing care for them, to identify and determine the occurring infringements, negligence, and more dramatic pathologies in the child's environment. The legal protection of the child and the whole family is determined by numerous laws, the most important of which are contained in the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997 No. 78, item 483).

The Constitution, despite the provisions relating to children's rights, does not define the term "child". This definition was included in Article 1 of the

Convention on the Rights of the Child of 20 November 1989 (Journal of Laws 1991 No. 120, item 526), which Poland ratified in 1991. According to the text of the above article, "a child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier". The definition takes into account the criterion of majority is also contained in the Act on the Children's Ombudsman in Article 2 paragraph 1. Thus, it may be noted that the definition of a child in Polish law is identical to the definition contained in the Convention on the Rights of the Child. Additionally, in the Preamble to the Convention on the Rights of the Child, the very need to protect the children and their rights has already been indicated, stating that: "the child, because of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".

2 GENESIS OF CHILDREN'S RIGHTS IN POLAND

Before the rights of the child were discussed in Poland, it was moral, religious, and customary norms that determined the attitude towards the child in the community. One of the first important documents created on Polish lands was the Wiślica Statute from the XIV century. The document was one of the first written legal regulations on Polish lands, which came into force in the middle of the 14th century. The norms and customary laws were codified by the then king of Poland -Casimir the Great. The process of shaping children's rights was long and uneven, but the situation of minors was gradually improving. Descendants whose parents had died were provided with a guardian, so the institution of adoption was developing. The state began to protect the family. It imposed penalties for the ill-treatment of minors and murder. Orphans had a special place in the Wiślica Statute. Unfortunately, the quality of life of illegitimate offspring deteriorated (Balcerek, 1986, pp. 168-171). In the Middle Ages, children were usually neglected. The youngest offspring were taken care of exclusively by women. Girls were prepared for adult life by mothers, boys by fathers (Korczak, 2004, p. 43).

At the end of the Middle Ages, the father's power was limited, although he was still the head of the family. The state's care of the family was

strengthened - children gained few rights. The illegitimate children had no rights at all. In the 16th century, marriage was only possible through the institution of the Church. If a child was born outside of marriage, he or she could not bear the father's name or inherit from him and was called a bastard. In the Church, there was no place for illegitimate descendants, and they had difficulties finding employment. The life situation of the bastards was dramatic, and they usually formed a socially excluded group. The youngest got help only from sensitive people. The state began to supervise the performance of the guardian's duties at the turn of the 16th and 17th centuries (Balcerek, 1986, pp. 173-174).

The breakthrough came on 14 October 1773, when the Sejm appointed the Commission of National Education (KEN). It was the first Polish and European educational institution acting on behalf of the state (Bartnicka, 1973). The education and upbringing of children from all social classes were the basis of the reform. It covered the education of girls. The introduction of education at parish, higher and main schools was another postulate (Miszczak, 2018). KEN tried to provide the youth with a sense of security, dignity, care, while at the same time being strict about upbringing. The institution used corporal punishment (Janeczek, 2017).

The Commission's activities were interrupted by the partitions of Poland. It was a period in the history of Poland and Lithuania in the years 1772-1795, when the Polish-Lithuanian Commonwealth ceded part of its territory to neighboring states: Russia, Prussia, and Austria (invaders), as a result of a lost war or under a threat of use of force. At the end of the 18th century, aid mechanisms for the neediest, including children, were launched. However, the partitioners suppressed the reforms. Polish children found themselves in a difficult situation (Balcerek, 1986, p. 183). In villages, they helped at home and on the farm from an early age. The youngest children of the working families had to work. Obedience was enforced by beating (Kałwa, 2004, p. 260). Under occupation, very bad treatment of children from extramarital relationships continued.

For example, in the Russian partition, the law was different for a legitimate and an illegitimate child. A child born to married parents was given the

father's name and was in the parents' custody. This child had the right to inherit. However, an illegitimate child had no rights. According to the German Civil Code, parents were to take care of minors (Balcerek 1986, pp. 186-199).

German legislation did not give them many rights. Schools did not teach in Polish and subjects like Polish history and culture were prohibited. Children were separated from their parents and given away to German families (Balcerek 1986, pp. 186-199).

In the Austrian partition, the situation of minors was the best. The Austrian Civil Code was in force there. The parents had many obligations, as well as prohibitions. They were to take care of the upbringing. Their right to punish was limited. Parents who did not fulfill their duties could lose their parental authority. The main difference from the other partitions was that the father had to take care of an illegitimate child. In Galicia, young people had access to education (Balcerek 1986, pp. 186-199).

After the regaining of independence, many political parties paid attention to the rights of the child in their political programs. They called for universal and free education of children, protection of underage labor, material aid for the poor, and state care for motherhood. They also proposed meals in schools, summer camps, and the establishment of kindergartens and nurseries. In the Polish People's Party "Wyzwolenie" (Liberation) program of 1921, a separate section on education was created, which included, among others: "We are striving to implement a universal school, one for all children, without any difference of state, nationality or religion". (<http://lewicowo.pl/program-psl-wyzwolenie/>).

On March 21, 1921, the March Constitution was adopted in Poland (Journal of Laws 1921 No. 44, item 267). Under this document, children were guaranteed the right to education, as well as state aid. In the following part, the Constitution dealt with the subject of juvenile labor and forbade the employment of school-aged children. The provisions on children's rights contained in the March Constitution were only implemented in the Polish People's Republic (the official name of the Polish state in the years 1952-1989).

In the interwar period (the period between the end of World War I - in November 1918 and the beginning of World War II - in September 1939) the creation of family and guardianship law failed. At that time, Janusz Korczak was a precursor of the idea of children's rights and the author of the famous words: "There are no children, there are people." (Korczak, 1958, pp. 210-211; Theiss, 2012). As a practitioner, Janusz Korczak had a thorough knowledge of the child's development, its somatic, mental, and social aspects. Based on years of research and documented observation, he created his concept and his educational system, based on the assumption that the child "is already human". (Korczak, 1984, p. 337). He taught tolerance, respect, and love for the child.

The Second World War brought with it the extermination of first Jewish and then Polish children. The Nazis' hatred for the weak, sick, and handicapped was particularly damaging. Children were deprived of the right to life and education (Balcerek, 1986, pp. 221-223). In one of the German memorials entitled: "The issue of treating the population of former Polish areas from the racial-political point of view", it was decided to take away children up to the age of 10 from Polish families to "bring up the racially valuable children in the old Reich". (http://pl.auschwitz.org/lekcja/9_m_pamieci/kurs/s404/fragmenty.pdf). Another way was to force children to work in the General Government.

A number of rights (civic and human) were only included in the Constitution of the Polish People's Republic (PRL) adopted by the Legislative Sejm on July 22, 1952 (Journal of Laws 1952 No. 33, item 232 as amended). Article 61 of the Constitution of the People's Republic of Poland gave an equal right to free and compulsory education. It guaranteed state scholarships and halls of residence available for children from a peasant, worker, and intelligentsia families. Article 66 of the 1952 Constitution, in addition to providing mother and child with care, promised to expand nurseries and kindergartens. Article 67, which gave rights to children born out of wedlock, who until then had been in a tragic situation, was an important change. In accordance with Article 68 of the Basic Law, the Polish People's Republic took care of young people and provided them with comprehensive development. The rights of minors were strengthened in 1976 due to a partial

amendment of the Constitution of the Polish People's Republic. According to Article 3 point 7 of the Act of 10 February 1976 on the amendment of the Constitution of the People's Republic of Poland (Journal of Laws 1976 No. 5, item 29 as amended) - the state "in the interest of the development of the nation shall take care of the family, motherhood, and upbringing of the young generation", and according to paragraph 9 it "shall develop and promote education". Articles 78 and 79 were also related to the state's care for the child and the family. They imposed an obligation on parents to raise their children. They introduced maintenance rights and obligations. Article 73 ensured the education of young people guaranteed by the state and as well as opportunities for their development. It created conditions for the participation of young people in social, cultural, and political life (Journal of Laws 1976 No. 7 item 36 as amended).

The rights of the child were clarified in 1964 with the announcement of the Law of 23 April 1964-Civil Code (Journal of Laws 1964 No. 16 item 93 as amended), Law of 17 November 1964. - Code of Civil Procedure (Journal of Laws 1964 No. 43 item 296 as amended) and the Law of 25 February 1964 - Family and Guardianship Code (Journal of Laws 1964 No. 9, item 59 as amended).

According to the Civil Code, adults have full legal capacity, and persons under 13 years of age do not have it at all. Natural persons between 13 and 18 years of age have limited legal capacity. Book four - "Inheritances" provides a minor with the right of inheritance by virtue of the law and will, regardless of being a biological child or an adopted child (<https://www.gandalf.com.pl/files/products/texts/325949.pdf>, pp. 11-13).

Under Polish law, a child is a human being from conception to adulthood (Article 2, paragraph 1 of the Law of 6 January 2000 on the Children's Ombudsman, Journal of Laws 2000 No. 6 item 69 as amended). This means that a child is protected by law from the moment of conception. The Convention on the Rights of the Child defines that "a child means every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier". (Journal of Laws 1991 No. 120, item 526 as amended). The "child" has a specific meaning in

legal terms. Additionally, the legislator - to specify a group of children (e.g. taking into account their age or situation) - uses terms such as "nieletni" [*minor*] (Law of 26 October 1989 on juvenile justice, Journal of Laws 2018, item 969 as amended) or "młodoletni" [*underage*] (Law of 23 April 1964. Civil Code, Journal of Laws 1964 No. 16 item 93 as amended). "Młodociany" [*juvenile*] is a person up to 21 years of age who committed a crime and until the conviction of guilt is pronounced, has not turned 24. This term is used in the Penal Code (Olszewski, 2011, p. 210).

At the time of birth, children have human rights but their civil rights are incomplete. They must have a legal guardian who represents them and looks after them at the same time. Biological parents are usually legal guardians. When a child does not have a legal guardian, the state becomes one. The rights of the child are a set of rights that children receive because of their specific social status, different from that of adults. Children need special treatment and attention from adults. The role of the state is to secure children in the law-making process. These rights aim to create development opportunities for a young person (Balcerek, 1986, p. 6).

3 CHILDREN'S RIGHTS AND THEIR PROTECTION IN THE LIGHT OF THE CONSTITUTION OF THE REPUBLIC OF POLAND OF 1997

The Basic Law of 2 April 1997 in several articles contains regulations concerning children. According to Article 18, the state provides special care to the family and parenthood. According to Article 34 of the Constitution of the Republic of Poland - a child born to Polish parents cannot be refused Polish citizenship. Paragraph 2 of Article 48 guarantees that only a court may take a child away from the family. Article 65 paragraph 3 unequivocally prohibits the employment of children under the age of 16. In Article 68 paragraph 3 the Constitution guarantees children as well as pregnant women exceptional access to medical care. Paragraph 5 refers to the promotion of the physical activity. Article 70 constitutes an important provision, which ensures the right and obligation to study until the age of 18. Further provisions point out that education in public schools is free of charge (Article 70, paragraph 2) and that parents are free to choose their child's

school (Article 70, paragraph 3). In Article 71 the Basic Law pays special attention to single-parent families with many children in a difficult financial situation. Article 72 particularly protects a minor from violence, demoralization, and cruelty (point 1). If the parents cannot provide care, the State has to ensure it (Article 72, paragraph 2). The minor's best interests must be a primary consideration and their opinion must be heard (Article 72, paragraph 3). The last paragraph mentions the Children's Ombudsman, referring to the law on the competencies and manner in which he or she is appointed (Article 72, point 4).

The Basic Law states that the family is the most important environment for the upbringing of a young person. Therefore, the family has a special position in the Constitution, just like motherhood. A child should not be taken away from its parents without important reasons. The Constitution assumes state aid for poor or large families. Support for multi-children families is often also regulated by local law. The authorities of many cities decide, among other things, to provide free transport for the youngest. Government aid programs, such as "500+" (The "Family 500+" program is the financial foundation of family support. The program entered into force on April 1, 2016, and has contributed to the improvement of the financial situation of families. From July 1, 2019, a parental benefit is granted for every child up to the age of 18, regardless of the income of the family (<https://www.gov.pl/web/rodzina/rodzina-500-plus>). Children cannot be exploited, there is a prohibition of labor for children under 16. The rules on the employment of minors are regulated by the provisions of the Labour Code (Journal of Laws 1998, No. 21, item 94, as amended), the Civil Code (Journal of Laws 1964, No. 16, item 93, as amended) and the regulation of the Council of Ministers of 24 August 2004 on the list of jobs prohibited for adolescents, Journal of Laws No. 200, item 2047, as amended.

The state places emphasis on the physical development of the child, each school should have a gym and a sports field. To ensure the physical culture, sports clubs have been created where young people can practice a sport according to their interests. Most Polish municipalities have their own sports clubs and pitches. To ensure adequate medical care, the state builds children's

hospitals, children's wards, and educates doctors specializing in the care of minors. The state should develop education at various levels: kindergartens, primary, vocational, secondary, and higher schools. Children can start education according to their interests and abilities.

4 INSTITUTION OF THE CHILDREN'S OMBUDSMAN

The world's first office of the Children's Ombudsman was established in Norway in 1981, and it is a prototype of this institution in other countries around the world. The institution of the Children's Ombudsman was indicated in Article 72, paragraph 4 of the Constitution of the Republic of Poland of 2 April 1997. The scope of competence and manner of operation is also regulated by the Law of 6 January 2000 on the Children's Ombudsman (Journal of Laws 2000 No. 6 item 69 as amended). The Ombudsman is the guardian of children's rights as defined in the Constitution of the Republic of Poland, the Convention on the Rights of the Child and other legal provisions (Article 1, point 2 of the Act of 6 January 2000 on the Children's Ombudsman, Journal of Laws 2000 No. 6, item 69 as amended). The office was first filled in June 2000.

The Ombudsman shall take action to ensure the full and harmonious development of the child with respect for their dignity and subjectivity (Article 3, point 1, Journal of Laws 2000 No. 6, item 69 as amended). He or she promotes the protection of children's rights, in particular: the right to the protection of life and health, the right to education within the family, the right to education, and the right to a decent social environment (Article 3, point 2). The Ombudsman acts in favor of all children but special attention is paid to children with disabilities. His or her tasks also include protecting minors from exploitation, violence, and neglect. The Children's Ombudsman takes action on his or her initiative, taking into account, in particular, information from citizens or their organizations indicating a violation of children's rights or well-being (Article 9, point 1, Journal of Laws 2000 No. 6, item 69 as amended). He or she requests explanations, information, or requires the proper undertaking of tasks. The Ombudsman cooperates with associations, citizens' movements, other voluntary associations, and foundations working to protect children's rights

(Article 11a, Journal of Laws 2000 No. 6, item 69 as amended). He or she is also responsible for promoting children's rights through social campaigns: "Love. Do not hurt. Help", "Beating is stupid", "There are no children - there are people", "React. You have the right." Social campaigns aim to educate society on how to react to the use of violence against the youngest and to sensitize to children harm. The Ombudsman may request that the law concerning children's rights be improved.

The Office ensures the performance of the Ombudsman's tasks specified in the Act of 6 January 2000 on the Children's Ombudsman. At his or her side operates the Ombudsman's Child Helpline. It is a telephone line operating around the clock and it is free of charge. Children and young people with various problems call the Child Helpline. Young people can dial 800 12 12 12 and share their difficulties related to violence, problems with their peers, family, or school. This institution is also an intervention agency. Adults call when they witness violence against the youngest. Specialized educators, lawyers, and psychologists work there. The office of the Children's Ombudsman is located at 6 Chocimska Street in Warsaw.

5 CONCLUSIONS

1. It seems that nowadays children in Poland are legally "equipped" enough to be able to exercise their rights and freedoms or to assert rights in case of their violation.
2. The Convention on the Rights of the Child, which is in force in Poland, together with other human rights and children's rights standards, such as those adopted by the Council of Europe, serve as a basis for guaranteeing children's rights and freedoms.
3. In Poland, the Constitution of the Republic of Poland is the most important legal act relating to the protection of these rights. It guarantees the protection of the child against violence, demoralization, cruelty, or exploitation. Also, the Constitution appoints the Children's Ombudsman to guarantee the observance of children's rights and their protection. Such place of the Children's Ombudsman in the system of Polish law is the recognition of children's rights and their protection as a unique area which should be dealt with entirely by a specialized institution.
4. Poland has several bodies, institutions, and organizations whose efforts focus on children's rights and their protection. However, they often operate only in a specific social environment or area, sometimes the situation of the child is not the main subject of their activities. From this point of view, the establishment of the Children's Ombudsman as an independent institution supports the state's efforts to maximize the protection of children's rights. The Ombudsman does not replace specialized services and associations dealing with child protection but intervenes in situations where existing procedures have proved ineffective or have been abandoned. The establishment of the office of the Children's Ombudsman, together with its powers, has significantly enriched the scope of protection of the rights of the youngest citizens. The Ombudsman's activity facilitates a constant and systematic analysis of problems concerning both the child and the family.
5. The question of the actual implementation of children's rights and raising the standards of such protection, i.e. the practical application of legal regulations, remains relevant.

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Received for publication: 07.09.2020
Revision received: 06.10.2020
Accepted for publication: 30.12.2020

How to cite this article?

Style – **APA Sixth Edition:**

Kmak, M. (2021, January 15). Development of children's rights in Poland – Selected aspects. (Z. Cekerevac, Ed.) *MEST Journal*, 9(1), 46-53. doi:10.12709/mest.09.09.01.06

Style – **Chicago Sixteenth Edition:**

Kmak, Malgorzata. 2021. "Development of children's rights in Poland – Selected aspects." Edited by Zoran Cekerevac. *MEST Journal (MESTE)* 9 (1): 46-53. doi:10.12709/mest.09.09.01.06.

Style – **GOST Name Sort:**

Kmak Malgorzata Development of children's rights in Poland – Selected aspects [Journal] // *MEST Journal* / ed. Cekerevac Zoran. - Belgrade – Toronto : MESTE, January 15, 2021. - 1 : Vol. 9. - pp. 46-53.

Style – **Harvard Anglia:**

Kmak, M., 2021. Development of children's rights in Poland – Selected aspects. *MEST Journal*, 15 January, 9(1), pp. 46-53.

Style – **ISO 690 Numerical Reference:**

Development of children's rights in Poland – Selected aspects. **Kmak, Malgorzata.** [ed.] Zoran Cekerevac. 1, Belgrade – Toronto : MESTE, January 15, 2021, *MEST Journal*, Vol. 9, pp. 46-53.