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Parents’ rights in school as a tool of democracy (?) – Analysis of legal acts regulating parents’ participation in the process of children’s education

**Prawa rodziców w szkole jako narzędzie demokracji (?) –
analiza aktów prawnych regulujących udział rodziców w procesie edukacji dzieci**

Abstract

Aim. This analysis examines the rights of parents in the school context. The aim of the research is to juxtapose the universal rights of parents (both European and Polish) with specific rights established in regulations governing school organisation in Poland.

Methods and materials. The study involves the analysis of two groups of documents concerning parents’ rights: 1) Universal rights, including the Constitution of the Republic of Poland, the European Charter of Parents’ Rights, the EU Charter of Fundamental Rights, the Declaration of Human Rights, the Convention on the Rights of the Child, and the Family and Guardianship Code. 2) Particular rights of parents related to current school law, including Education Law, the Teacher’s Charter, regulations on the organisation of public

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schools, and regulations on framework school statutes.

Results and conclusion. The analysis reveals a significant gap between universal rights, which provide parents with broadly defined privileges and responsibilities for the upbringing and education of their children, and particular rights, which, while detailed, offer only limited means for parents to assert their rights within the educational process. This study highlights the starkly different legal perspectives: universal rights position parents as key figures in their child's education, whereas particular rights focus on detailed school regulations.

Keywords: parents' rights in school, universal rights, particular rights, school, parents in school, legal acts, democracy, text analysis.

Abstrakt

Cel. Przedmiotem analizy są prawa rodziców w kontekście szkolnym. Celem badań jest zestawienie uniwersalnych praw rodziców (europejskich i polskich) z prawami partykularnymi, wynikającymi z przepisów regulujących organizację szkół w Polsce.

Metody i materiały. Przeprowadzono analizę dwóch grup dokumentów dotyczących praw rodziców: 1) Prawa uniwersalne, zawarte w Konstytucji RP, Europejskiej Karcie Praw Rodziców, Karcie Praw Podstawowych UE, Deklaracji Praw Człowieka, Konwencji o Prawach Dziecka oraz Kodeksie Rodzinnym i Opiekuńczym; 2) Prawa partykularne wynikające z polskiego prawa oświatowego, Karty Nauczyciela, rozporządzeń dotyczących organizacji szkół publicznych oraz ramowych statutów szkół.

Wyniki i wnioski. W analizie wykazano znaczną rozbieżność między prawami uniwersalnymi, które przyznają rodzicom szerokie uprawnienia i obowiązki w wychowaniu oraz kształceniu dzieci, a prawami partykularnymi, które, choć szczegółowo opisane, oferują rodzicom jedynie ograniczone możliwości ochrony ich praw w procesie edukacyjnym. Różnice te ukazują radykalnie odmienne podejście: prawa uniwersalne przypisują rodzicom kluczową rolę w edukacji dzieci, podczas gdy prawa partykularne koncentrują się na szczegółowych regulacjach działań szkoły. Omówiono wątpliwości dotyczące tego, czy analizowane akty prawne wspierają demokratyzację praw rodziców w szkole, czy raczej sprzyjają ich wykluczeniu jako pełnoprawnych partnerów w procesach edukacyjnych w polskich szkołach.

Słowa kluczowe: prawa rodziców w szkole, prawa uniwersalne, prawa partykularne, szkoła, rodzice w szkole, akty prawne, demokracja, analiza tekstu.

Introduction

Parents at school is a topic that receives a lot of attention in educational discourse. Concepts such as their position at school, typology, and historical changes in the role

of parents at school are discussed. Marta Wiatr (2019) proposes understanding parents from the perspective of two discourses, which she calls “instrumental-technical” and “critical-emancipatory.” In the first, based on technical solutions, the teacher initiates and controls cooperation with parents and directs their actions according to the needs of the students diagnosed at school. The author argues that the critical-emancipatory discourse, in which the position of parents is strengthened by seeking alternative concepts of cooperation and involvement and recognising parents as competent partners who not only know their children well but also have the right to express their opinions on issues concerning them and the school’s activities, is virtually absent in Polish schools. In view of the opposing approaches to parents in schools outlined here, I found it interesting to analyse the legal framework governing parental involvement in their children’s upbringing and education. Addressing the issue of their rights from the perspective of the applicable legal acts seemed to me to be a perspective worth considering in the context of the position of parents in schools. Some authors (Moschella, 2016; Krumm, 1989a, 1989b) consider the participation of parents in school life and ask the following question: to whom do children belong – to schools, the state, or their parents?

I will conduct the proposed analysis of legal texts by reviewing two groups of documents:

1. those representing higher-order laws (at the legislative level), which I refer to as *universal (general) rights* for the aim of this paper;
2. representing lower-order laws (at the executive level), which I have called *particular (school) rights* for the aim of this work.

Table 1

List of analysed documents divided into universal and particular rights as adopted in this study

Analysed legal acts divided into higher-level laws	
Universal (general) rights	Particular (school) rights
The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997 No. 78, item 483)	Act on the Education System (Journal of Laws 2024, items 750, 854, 1473)
European Charter of Parents’ Rights and Responsibilities	Act of 14 December 2016
Charter of Fundamental Rights of the European Union	on <i>Education Law</i> , as amended (Journal of Laws 2023, items 900, 1672, 1718, 2005)
Family and Guardianship Code (Journal of Laws 2023, item 2809)	Teachers’ Charter (Journal of Laws 2024, item 986)
Charter of Rights of the Family	Regulation of the Minister of National Education of 28 February 2019 on the detailed organisation of public schools and public kindergartens (Journal of Laws 2019, item 502)
Universal Declaration of Human Rights	
Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 (adopted in Poland in 1991, Journal of Laws 1991, No. 120, item 526)	

Source: Author’s own study.

Universal rights

Universal rights are higher-order provisions, which I include: the Constitution of the Republic of Poland (1997), the European Charter of Parents' Rights (1992), the Charter of Fundamental Rights of the European Union (2016), the Family and Guardianship Code (1964), the Charter of Rights of the Family (1983), the Universal Declaration of Human Rights (1948), and the Convention on the Rights of the Child (1989). I propose to present the analysis I am using here by formulating the rights of parents arising from the analysed documents.

The primary source of general law is the Constitution of the Republic of Poland, which guarantees citizens of the Republic of Poland a legal framework for functioning within the state. The provisions contained therein, analysed in the context of parents' rights, give them clear primacy in the upbringing and education of children. This is laid down in the articles contained in Chapter II, "Wolności, prawa i obowiązki człowieka i obywatela" [Freedoms, rights, and duties of the human being and the citizen], and in particular in Articles 47, 48, 53, 70, 71, and 72. The provisions of the Constitution in the context of parents' rights can be summarised as follows: Article 47 provides for the legal protection of family life, Article 48 for the right of parents to raise their children following their convictions, Article 53 for the right of parents to ensure that their children receive moral and religious education following their convictions, Article 70 for the right to education, 71 on state assistance to families, and 72 on the protection of children's rights.

Based on an analysis of universal rights, I have identified two universal rights of parents: the right to raise and educate their children and the right to state protection.

The right to raise and educate a child

The right to raise children is enshrined in Article 48 of the Constitution: "Parents have the right to raise their children in accordance with their convictions. This upbringing should take into account the child's level of maturity, as well as their freedom of conscience, religion and beliefs."

The Constitution guarantees parents' influence over the upbringing and education of their children (Uryga, Wiatr, 2015), which is inextricably linked to parental beliefs. This emphasises not only the fact that parents have the right to be the primary educators of their own children, but also the importance of parental beliefs as a framework for raising children. The parental right to raise children following their own beliefs is clarified and supplemented in Article 53 of the Constitution, which grants parents the right and duty to raise and educate their children not only towards the state but also towards the child. The Family and Guardianship Code in Article 95 also emphasises that the right to raise children is a duty of parents.

The recognition of the child, both in the Constitution and in the Family and Guardianship Code, as the subject of parental actions (and responsibilities!) towards the child is an expression of a deep understanding of the child's subjectivity. Constitutional law, therefore, gives educational primacy to parents, placing children at the centre of parental duties. Significantly, parents have the right and duty to raise their children, not the state. The Constitution recognises children as subjects of upbringing and emphasises the parental duty to take into account the child's level of maturity, freedom and beliefs in the upbringing process. Similarly to the Constitution, which emphasises the child's will depending on their degree of maturity (Bielecki, 2007), the Family and Guardianship Code also focuses on the child's welfare by stipulating that the upbringing of a child needs to take place "with respect for their rights" (Act, 1964, Article 95). The parental right to upbringing is also treated as a kind of guarantee of generational continuity. This is stipulated in the European Charter of Parents' Rights and Responsibilities (1992), which emphasises in its preamble that the upbringing of children is an expression of the hopes of parents, confirming that they have the future in mind and place their trust in the values passed on to the next generation.

According to Article 70 of the Polish Constitution, parents are recognised in law not only as the first educators of their children, but also as responsible for their education and even for establishing schools. They have the right to choose a school other than a public school and to establish their own schools*. They are responsible for ensuring the best conditions for their child's development. The state has to support families in this area (Babiuch, 2014). The law also protects the special position of parents (Constitution, 1997, Article 70, point 4). The provisions of the Constitution are reflected in the Charter of Fundamental Rights of the European Union (2016) in the following provision: "[...] everyone has the right to education and access to education, as well as to shape the educational reality through the choice and establishment of schools, and equally established requirements for both private and state schools."

Right to state protection

The Polish state guarantees legal protection to every citizen in the name of freedom. Polish citizenship is acquired by birth to Polish parents. Children, mothers and families have special rights. The Constitution (1997, Article 18) emphasises that: "[...] marriage

* Parents have the freedom to choose schools other than public schools for their children. Citizens and institutions have the right to establish primary, secondary and higher education schools and educational institutions. The conditions for establishing and operating non-public schools and the participation of public authorities in their financing, as well as the rules for pedagogical supervision of schools and educational institutions, are laid down by law.

[...], family, motherhood, and parenthood are under the protection of the Republic of Poland.” This protection applies not only to the process of upbringing, but also to the legal protection of “[...] private and family life, honour and good name, and the right to decide on one’s personal life” (Constitution, 1997, Article 47). Polish provisions are in line with the Universal Declaration of Human Rights (1948, Article 16, point 3), which states that “[...] the family has the right to protection by society and the State.” The Polish state fulfils a protective function towards the family, ensuring the conditions for the fulfilment of this task through free education and universal and equal access to it (cf. Babiuch, 2014). All children, whether born in or out of wedlock, enjoy equal social protection (Universal Declaration, 1948).

The Charter of Family Rights (1983) also stipulates that the family has the right to assistance from society in relation to the birth and upbringing of children. Parents “[...] should also receive from society the necessary assistance and support to enable them to fulfil their role as educators” (Charter of Rights, 1983, Article 5, point a).

Education law also emphasises the supportive role of the state, which, through the education system, supports the educational role of the family (Act, 2016, Art. 1, para. 2). The Convention on the Rights of the Child, ratified by the Republic of Poland, also emphasises the state’s care for the upbringing process in the provision: “[...] the family [...] should be given the necessary protection and support” and the primacy of parents in the upbringing and development of the child: “parents [...] have the primary responsibility for the upbringing and development of the child, and the state shall provide them with appropriate assistance” (Convention, 1989, Art. 18, points 1–2). State assistance is emphasised again in the sentence: “[...] States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and ensure the development of institutions, services and facilities for the care of children.”

Article 72 of the Constitution also contains a provision on the protection of children’s rights against violence, cruelty, exploitation and demoralisation*. This right also applies to relations between parents and children within the family. Constitutionalists argue that this article should be read in the context of the constitutional principle of respect for the inherent and inalienable dignity of the human person (Babiuch, 2014). In this way, the law regulates the rules of functioning within the family, protecting its members from violence experienced in the family (here, particular emphasis is placed on protecting children from violence by their parents).

To sum up the analysis of higher-level documents, it should be concluded that these rights guarantee parents priority in the upbringing and education of their children

* This also applies to relations between parents and children. Children remain the only social group in Poland that is subject to corporal punishment (Babiuch, 2014).

and provide care for parents and children. Particularly noteworthy is the understanding of the child's subjectivity as the beneficiary of these rights, taking into account their needs arising from their maturity and beliefs. The question posed at the beginning of this text can be paraphrased here as follows: children belong to their parents and are the compass around which all higher-level rights are constructed. It should be stated that the child is at the centre of the efforts of parents and the state to ensure that the child's developmental needs are met. The implementers of (educational and upbringing) measures addressed to the child are the parents, who are guaranteed protection by the state in this area. In the analysed provisions of universal law, parents are recognised as competent partners who not only know their children perfectly, but also have the right to actively act on behalf of their own children. Universal law places parents in a critical and emancipatory discourse as legally sanctioned first educators and teachers of their children.

Particular rights of parents per applicable school law

Particular rights have been constructed as guidelines for specific solutions adopted in Poland throughout the entire education system. A detailed analysis allows for the identification of certain areas of application of the law with regard to parents functioning in educational institutions as the first educators and teachers of their children. The provisions governing the role of parents in institutions determine the activities of the educational institution. My analysis has identified the following rights of parents in particular law:

Right to be informed

The dominant right emerging from most of the paragraphs regulating parental involvement in educational institutions is the right to be informed. The provisions (Act, 1991) specify in detail the areas in which parents are to be informed. This includes information on educational requirements, the child's achievements at the institution, assessments, and the organisation of educational processes at the institution. A detailed analysis would take up most of this article, so I will only summarise the areas of parental presence in the legal provisions and provide what I consider to be representative examples. For example, the Act of the Education System (1991) contains provisions stating that parents have the right to information about the educational requirements of the curriculum and to be informed about how school performance is assessed. Parents also have the right to information about their child's progress, including special talents, behaviour, progress and reasons for difficulties, as well as advice on matters relating to the upbringing and further education of their children. They have the right

to information about grades, the conditions for receiving a higher grade than the average, a higher grade for behaviour, and the student's predicted annual grades. Parents also have the right to information about the organisation of the educational process, including the eighth-grade exam and the secondary school leaving exam for pupils with a special educational needs certificate, about any plans to cancel the exam, close the school or transfer students to another school*. The extremely detailed regulations emphasise the need to inform parents about all school tasks related to the educational and organisational process.

Right to request

The second most frequent right in specific provisions (Act, 2016) is the right to request. The areas subject to request have been specified in detail. Parents may therefore request: repetition of a year, transfer to a higher grade, exemption or adaptation to the needs of a student with an examination certificate, commencement of education at the age of six, fulfilment of compulsory education outside an educational institution, change of language or other subject of choice, and access to examination records by higher authorities (OKE). They may also apply for an individual programme or course of study for their child and the provision of an appropriate form of education**. Parents also have the right to request that students wear a uniform on school premises, as well as to request after-school activities for students, exemption from classes for students with hearing impairments, dyslexia and multiple disabilities. Parents may request the establishment of a school council representing all parents of the students at the school or institution; they may submit requests concerning all matters relating to the school or institution through the parents' council (Act, 2016), and may also request an assessment of a teacher's professional performance (Act, 1982).

Right to an opinion

Detailed regulations (Act, 2016) provide parents with numerous options when it comes to expressing their opinions. In many documents, it's a must-have in the decision-making process for a bunch of things that happen at the school. In most documents related to school management, giving an opinion is an act of parental consent to the actions taken at school. Due to the fact that schools are, in a sense, obliged to ask parents for such consent in the process of democratisation, the scope of parents' opinions on school activities is very broad. Parents give their opinions on:

- the work of the school (to the body supervising the school),

* Also access to exam documentation and the student's checked and graded written work.

** This application concerns a child with a disability.

- the selection of a set of textbooks or educational materials to be used in all classes of a given grade for at least three school years (Act, 1991),
- conducting a pedagogical experiment at the school or institution (Act, 2016),
- the school's educational and preventive programme*,
- programme and schedule for improving the effectiveness of education or up-bringing (Act, 2016),
- draft financial plan submitted by the school headteacher (Act, 2016),
- undertaking activities of an association or other organisation on the premises of the school or institution (Act, 2016),
- kindergarten schedule (Act, 2016),
- implementation of additional educational activities at school (Act, 2016),
- Teacher Performance Evaluation (Act, 1982).

Parents' right to participate in:

- the competition committee selecting the school principal (two persons selected from the parents' council and parents' councils in the case of a school complex**) consisting of 11–12 persons (two persons from the parents' council, two persons from the teaching council, three persons from the teaching supervision authority and three persons from the school's governing body (Act, 2016);
- the school council (composed of equal numbers of teachers, parents and students) (Act, 2016);
- the parents' council, which operates at each school (except certain art schools). Elections to the parents' council are held at the first parents' meeting of each school year (Act, 2016).

In summary, it is evident that the specific provisions I have presented above very strictly and meticulously define the role of parents in school. These provisions are part of an instrumental-technical discourse based on technical solutions, in which the school initiates and controls the actions of parents towards their children at school. The detailed rights granted to parents are an expression of the meticulously articulated processes of (apparent) democratisation of school activities. Most of the rights presented above

* With the condition that if, within 30 days of the start of the school year, the parents' council fails to reach an agreement with the teaching staff on this matter, the programme shall be determined by the headteacher in consultation with the educational supervisory authority.

** The committee shall consist of no fewer than 11 persons (three representatives of the school governing body and the educational supervision authority, two representatives of the teaching staff and two representatives of the parents' council, and one representative of the trade unions).

are the result of the political changes after 1989. During the so-called “round table dialogue on education,” these were key demands for changes to the concept of school introduced during the successive reforms of the 1990s. Parents became mandatory members of teams deciding on the running of the school. In this way, they were given a mandate to participate in school decisions. Once again, we can see how valuable provisions, instead of democratising parental participation in education, isolate society from active participation in the activities of state-run institutions. The process of creating regulations for the socialisation of schools by the education administration did not lead to significant changes in terms of expanding the scope of autonomy for parents and students (Śliwerski, 2024), and legal regulations from the martial law period, treating schools as an extension of state power over society, are still in force in schools (Śliwerski, 2022). The extent to which this law reflects the voice of parents can be seen in the numerous publications by Bogusław Śliwerski (2001, 2001b, 2008a, 2008b, 2008c, 2009, 2012, 2013, 2015, 2017, 2020, 2022, and 2024), in which he exposes the façade of democratisation in internal school decision-making processes.

Education law and other detailed documents analysed appear to be a kind of bureaucratic behavioural pattern, very precisely defining the areas to which parents, as guardians of children, have access. It is as if the school wanted to draw a line, establishing seemingly very detailed and numerous rights for parents, creating *de facto* the appearance of democratisation. In everyday school life, this translates into information being passed on, which, validated by a signature without the possibility of reading the documents being signed or expressing a reliable opinion on them, creates the appearance of cooperation between parents and the school*.

Conclusion and recommendations

The two groups of legal provisions presented according to the author’s classification provide a view of the antagonistic position of parents in educational institutions:

1. Universal rights are full of assurances of the primacy of parents in the upbringing and education of their children and are part of the emancipatory and critical discourse on the role of parents in schools.
2. Particular rights expose the superficial understanding of universal rights by marginalising the participation of parents in decisions made at school and are part of the instrumental-technical discourse (Wiatr, 2019).

The law created by such legal acts gives the false impression that parents play

* Mostly “collected” during parent-teacher meetings.

an important role in the education process. However, a more detailed analysis of their participation in their children's education clearly shows that they play a minor role in the democratisation of their own children's educational processes. It is also significant that the law indicates, for example, the right of parents to inspect their children's test papers, thereby specifying that this is an area of school activity that is excluded from parental participation (in universal law, created for the child's first educators and teachers).

Parents' rights can also be viewed from the perspective of universal rights that are absent in particular rights: the right to participate in their child's education, the right to raise their child according to their own beliefs – these cannot be found in particular rights. The ideals of universal law are therefore not reflected in particular laws, which are described in great detail in many legal acts. The legal facts described here, which could be fundamental to the place of parents in school, have unfortunately turned out to be myths, exposing the marginalisation of parents in school (cf. Olechowska, 2017). Another issue is the fact that these rights are scattered across extensive legal documents, as if there was an intention to further isolate parents from school activities by making it difficult for them to access their rights, which are detailed in several regulations.

Finally, I will quote B. Śliwerski's conclusions regarding the law enacted in the Second Polish Republic (for?) parents:

- education law is created by successive “teams” of the Third Polish Republic to ensure that pedagogical supervision has an authoritarian standard of management in education (Śliwerski, 2022);
- the law is used for ideological wars in education. Too frequent, too detailed and inconsistent changes to the law are not well received in schools, not only because of the instability of the regulations, but also because of the permanent obligation to be accountable to superiors (Śliwerski, 2015);
- “too frequent, detailed and inconsistent changes to education law have undermined the instruments of social and civic authority and control over public education institutions” (Śliwerski, 2017, p. 277).

There is little optimism in these conclusions. However, based on the extraordinary role that universal rights have given to parents, I will conclude with the hope that universal rights will form the foundation of specific rights, guaranteeing parents an appropriate, democratic place in schools.

Returning to the questions posed by Melissa Moschell (2016) and Volker Krumm (1989a, 1989b) – to whom do children belong: to schools, to the state or their parents? – after conducting this analysis, the answer would be:

- in the view of universal rights, they belong to their parents, who are supported by the state,
- in the view of particular rights, children still belong to the school.

Despite such an extensive legal framework, the current legal status regulating the place of parents in schools creates boundaries between different categories of entities involved in the education process (Olechowska, 2017), showing that little has changed since the 1990s, when we set out on the path to democratising legal regulations changing the place of parents in schools.

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