

HOMESCHOOLING IN POLAND? LEGAL STATUS AND ARGUMENTS USED IN POLISH DEBATE OVER HOME EDUCATION

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Abstract

Purpose – the purpose of this article is to summarize the legal aspects of home education in Poland, with particular emphasis on the evolution of the provisions of the Polish School Education Act 1991 and selected jurisdiction of Polish administrative courts.

Design/methodology/approach – research was based on the analysis of legislation, including legislation drafts, published studies and other scholarly works as well as published opinions. The scientific approach was based on investigating which legal aspects of homeschooling have raised most controversies and have been thoroughly discussed.

Findings – the main findings of the research focus on presenting the evolution of the Polish education law regarding the issue of home education and the reactions – both from the legal doctrine and the practitioners of homeschooling – to changes of law. Practical aspects of implementation of the provisions were also shown on the examples of the verdicts of Polish administrative courts.

Research limitations/implications – article is based on already published works, but it proves that a clear evolution of Polish government’s approach to home education can be observed. However, the adoption of more accurate and clear provisions does not mean that they are less restrictive, although the recent amendments remove some of the obligations. **Practical implications** - article may be helpful for scholars interested in analysis of the Polish regulations applied to the home based education, offering them a summarized history of regulations and a selection of publications devoted to this subject. At the same time it points to the necessity of preparing more unbiased publications pertaining to the matter.

Originality/value - the article is has the form of literature review; it is mostly based on already published articles and selected verdicts. Its value lies in a summarized presentation of the direction of the evolution of Polish regulation considering home education.

Keywords: the right to education, homeschooling, administrative law.

Type of research: literature review

Introduction

The essence of home education (also known as homeschooling or home based learning) was accurately summarized in six points by a noted researcher Dr. Brian D. Ray in his article published in conference materials – “Szkoła domowa. Między wolnością a obowiązkiem” (2011, edited by J. Piskorski). Three of these points are particularly worth quoting: “Education based on home and family includes: 1. Parental obligation of their children’ upbringing and education. 2. Education, for which the family home constitutes the main basis and supply network and which takes places under the parental supervision. (...) 4. Teaching in home environment rather than in institutional class in school”¹. Home education is especially widespread in the United States. European countries observe a diverse approach towards home based learning depending on the attitude of a given government: from tolerant regulations, considering homeschooling as alternative to mandatory public school system (e.g. Great Britain) to highly restrictive provisions, which allow it only under exceptional circumstances (e.g. Germany)².

The key to the understanding of the Polish education system is to distinguish between two terms: the broader concept of “compulsory education” and the narrower concept of “compulsory school attendance” or “school obligation”³. In accordance with Article 70 of the Constitution of the Republic of Poland of 2nd April 1997⁴ education to the age of 18 years is compulsory and the manner of fulfilment of schooling obligations (compulsory school attendance) is specified by statute⁵. The constitutional provisions were repeated in the Article 15 of the Polish School Education Act of 7th September 1991 (hereinafter referred to as: SEA)⁶, which regulated the education system in Poland after the political transformation in 1989. Its current version clarifies the notion of compulsory school attendance: “Compulsory school attendance starts with the beginning of the school year in this calendar year, in which the child turns seven and continues to the completion of the education in the *gimnazjum* (lower secondary school), but no longer than to the age of 18 years”⁷. A further explanation of this matter is comprised in the provisions of the Article 16 SAE. According to Article 16 Paragraph 5 SAE compulsory schooling is fulfilled by the attendance at the Polish public or non-public primary and lower secondary school

¹ Ray (2011), p. 19.

² Polish Eurydice Unit prepared a special report on the status of home education in various European countries (Edukacja domowa, 2007), based on a questionnaire sent to 31 Eurydice Units and answered by 14 of them.

³ Król, Kuzior, Łyszczarz (2011), pp. 167-170.

⁴ The Constitution of the Republic of Poland, *Dziennik Ustaw (Journal of Laws of the Republic of Poland, further abbreviated Dz. U.)* 1997, No. 78-483, with further amendments.

⁵ Cf. Banaszak (2012); Skrzydło (2013) – commentaries on article 70 of the Constitution of 1997; cf. M. Możdżeń-Marcinkowski (2008), pp. 478-482. Noteworthy is that according to Article 48 of the Constitution parents have the right to rear their children in accordance with their own convictions.

⁶ Polish School Education Act, Dz. U. 1991, No. 95-425, with further amendments.

⁷ After recent changes in Polish education system primary school will be mandatory for 6 year old children.

and according to Article 16 Paragraph 5a SAE after the completion of a lower secondary school the compulsory schooling is executed by attendance at a public or non-public upper secondary school or by employer-provided vocational training in accordance with separate regulations. It should be noted that according to Article 14 Paragraph 3 SAE from school year 2004-2005 every child is obliged to attend either pre-school classes or kindergartens during one year of obligatory pre-school education¹.

Difficult beginnings

A short regulation dedicated to the admissibility of home education also appeared in the SAE. In the original text of the Act from 1991 Article 16 Paragraph 8 read as follows: “At parents’ request the school head may give his permission for fulfilling the school obligation out of school. A child fulfilling the school obligation in this form may attain the primary school leaving certificate on the basis of classification examination conducted by the school, which head had given permission for this form of school obligation”. The SAE and the provisions of Article 16 Paragraph 8 underwent multiple modifications within the next decade. Some of them were combined with the education system reform in 1999 and the introduction of new lower secondary schools (*gimnazjum*), others affected the matter of the school head relevant in issuing permission for home education². However, there was still a lot of uncertainty in applying the provisions of the Article 16 Paragraph 8 SAE. Discretionary decisions issued by the school heads were common. In the consolidated text of SAE, which was published in 2004, Article 16 Paragraph 8 sounded: “At parents’ request the head of public primary or lower secondary school, in the school district where the child lives, may give his permission for fulfilling the school obligation out of school and determine the conditions of its execution. A child fulfilling in this form the education or school obligations accordingly may receive a certificate of promotion to a higher grade or a school-leaving certificate on the basis of the classification examination conducted by the school, which head had given permission for this form of school obligation”³.

In the first decades after the introduction of SAE of 1991 the issue of possible home education affected only a handful of Polish children. However, some groups of active parents interested in this form of education have emerged over the years. Subsequently they took measures to organize themselves. Additionally, the first publications on the subject of homeschooling, based also on rich literature from abroad (particularly from the United States) began to appear on the Polish market. Highly important in those fields were the activities of Marek and Izabela Budajczak, who practiced home based learning since the mid-1990s. In his book “Edukacja domowa” (first published in 2002) Marek Budajczak – a researcher at Adam Mickiewicz University in Poznań first focused on the pedagogical and sociological aspects of homeschooling. However, M. Budajczak referred

¹ Cf. The System of Education in Poland (2010), pp. 8-9; Pilich (2013), pp. 287-291.

² Cf. for example: Act of 21 July 1995 amending the Polish School Education Act, Dz. U. 1995, No. 101-504.

³ Consolidated version of Polish School Education Act, Dz. U. 2004, No. 256-2572.

also to everyday practice of application of the provisions of Article 16 Paragraph 8 SAE of 1991 by public school heads and the educational officers at local and regional levels, while describing many years of struggles for obtaining permission for homeschooling and promoting his children to higher grades¹. Budajczak’s book became a model for next publications. Hitherto the most comprehensive of them has been an anthology edited by Marzena and Paweł Zakrzewski (2009). It contains a collection of over 25 articles, devoted to various aspects of home education. Majority of them were written by parents active in homeschooling. In addition to historical, psychological, sociological and pedagogical issues of home based education, its legal aspects were discussed as well. Some authors presented the everyday problems associated with applying unclear provisions of education law and the ordeal of regular classification examinations². Other articles analyzed the general issues of legal status of homeschooling in Poland³. Finally, two articles brought to attention applying home based education to chronically ill children⁴.

Although the matter of homeschooling involved only a small group of students, the vague nature of the provisions of the SAE of 1991 led to prolonged legal conflicts, which sometimes found their conclusions in courtrooms. Such conflicts were – for example – related to the obscure legal nature of the permission for home education granted by the head of the relevant school. This problem became also a subject of litigation before the Supreme Administrative Court in Warsaw. The analyzed case started in April 2007, when the parents of a minor applied – on the ground of Article 16 Paragraph 8 SAE – to the head of the relevant primary school for a permission to conduct home education in the school year 2007/2008, while determining the conditions of its execution. The first request was denied by the school head. The subsequent application contained detailed reasons for the permission, but the school head failed to respond to the substantive content of application. In the absence of the school head’s decision about the permission for homeschooling the parents decided to submit a complaint about the inactivity of administrative authorities to the Voivodship (Regional) Administrative Court in Warsaw. However, the complaint was rejected by the Court as the judges stated that emphasized in the statement of reasons for the decision, that “(...) the school head’s permission for fulfilling the school obligation out of school, (...) neither occurs in a form of an administrative decision, nor constitutes a specific type of act or different action of public administration, that would concern the entitlements or responsibilities arising from the legal regulations. (...) it should be stated, that the complaint about the inactivity of administrative authorities is not possible in this case, since it does not address any of the aforementioned forms of activity of the administrative authorities”⁵.

The child’s parents refused to give up and filed a complaint of cassation. In its decision from 11th September 2008 the Supreme Administrative Court in Warsaw set aside the contested ruling and referred the case back for reconsideration to the

¹ Budajczak (2004A), pp. 114-135. Another article – *cf.* Budajczak (2004B), pp. 349-358.

² For instance: Dzieciatko, Dzieciatko (2009), pp. 127-150; Polak-Pałkiewicz (2009), pp. 303-350.

³ Chłodna (2009); pp. 105-118; Zielińska (2009), pp. 475-490.

⁴ Jachimczak (2009), pp. 221-254; Pastuszek-Lipińska (2009), pp. 291-302

⁵ Decision of the Voivodship Administrative Court in Warsaw, 21 May 2008 (case No. I SAB/Wa 24/08).

Voivodship Court which issued the previous ruling. The Supreme Administrative Court took a completely different view on the legal nature of school head’s permission, as it was stated in the statement of reasons: “since (...) the school obligation (compulsory education) is an administrative obligation, so the case concerning its fulfilling out of school is an individual case decided by way of proceedings before public administration bodies” – and moreover – “the material law regulations do not need to (...) indicate the direct form of dealing with the administrative case. The indication of the public administration body’s jurisdiction to settle the case with a specific verb form, allows reaching a conclusion, in what form the public administration body should deal with this case”. Therefore, the Supreme Administrative Court held that the school head’s permission for fulfilling the school obligation out of school is expressed in the form of an administrative decision, which can be subsequently challenged with a complaint about the inactivity of administrative authorities¹.

Towards major changes. Act of 2009

The state of legal uncertainty, which examples have been described above, proved that fundamental change in existing regulations were necessary². Long expected changes in the field of home education were introduced during the Polish Sejm’s 6th term of office (2007-2011). However, these changes seemed to be overshadowed by much discussed reform important for the whole education system: the lowering of the age of commencement of compulsory education from 7 to 6. The draft legislation from November 2008, proposed by the Donald Tusk’s government provided also for significant changes to Article 16 SAE. In the statement of reasons of the draft legislation it was emphasized, that the proposed amendments would aim to extend the parents’ right to be given permission for conducting home based education. The aspiration to clarify the conditions necessary for obtaining such permissions and to eliminate the discretionary nature of school heads’ decisions in those cases was also pointed out. The statement of reasons of the draft legislation referred also to the issue of the mandatory classification examinations. It was noted that – in accordance with the demands of homeschooling practitioners and expert opinions – their frequency should be reduced³.

¹ Decision of the Supreme Administrative Court of 11 September 2009 (Case No. I OSK 1077/08).

² In the years 2006 – 2007, when the Ministry of National Education was headed by right-wing minister Roman Giertych, attempts were undertaken to amend the SAE of 1991 and to liberalize the procedures regarding home based education in Poland. However, due to the shortening of Polish Sejm’s term of office and the change of government the works on the amendment were left unfinished (*cf.* Śliwerski (2009), pp. 361-374). The situation of Polish families practicing homeschooling became a matter of concern also for the Polish Ombudsman and the Ombudsman for Children. Both officials issued a joint statement in January 2007, in which they requested the Minister of National Education to undertake actions in order to ensure equal educational opportunities for the children, whose parents would like to fulfill the compulsory education in form of homeschooling. The statement contained references to the Constitution and the international treaties ratified by Poland, *v.* Statement from 16.01.2007 (No. ZBA-500-3/07/KB) – *cf.* Polaszek (2011), pp. 62-63.

³ Sejm Paper No. 1343 from 6.11.2008 (6h Term of Office), pp. 29-30.

After a few months of the legislative process and introduction of some changes the Act of 19 March 2009 amending the SAE of 1991 was adopted by Polish Sejm. The new regulation came into force on 22 April 2009¹. Article 16 SAE was thoroughly restructured in order to clarify the procedure of obtaining the permission for homeschooling and subsequently conducting it. The bulk of regulations adopted in 2009 have remained in force up to this day. According to the new wording of Article 16 Paragraph 8 at the request of parents the head of a kindergarten or a primary, lower secondary and upper secondary school, to which the child was admitted, may permit, by way of decision, fulfilling the obligation mentioned in Article 14 Paragraph 3 SAE [*one year of obligatory pre-school education*] out of kindergarten, pre-school classes, other forms of pre-school education, as well as school obligation or compulsory education out of school. In accordance with Article 16 Paragraph 10 SAE (in the original version of Act of 2009), the permission, referred to in Article 16 Paragraph 8 SAE might have been issued after meeting certain conditions by the applying parents: 1) request for permission had to be filed until 31st May; 2) the application had to be accompanied by the following documents: an opinion from a psychological and pedagogical counselling center, parents' statement about providing the child with conditions enabling the completion of core curriculum obligatory for specific level of education and a parents' commitment, that while fulfilling the school obligation or compulsory education their child would take an annual classification examination during each school year. It should be noted that in accordance with Article 16 Paragraph 14 the permission would be withdrawn in occurrence of one of the following situations: 1) at the request of parents; 2) if the child for any unexplained reasons did not attend the annual classification examinations or did not pass them²; 3) if the permission had been issued with violation of law.

Coming into force of the amendments of 2009 was met with mixed feelings by the Polish practitioners of home education. Those concerns were visible in online discussions, newspaper articles and other publications. Good examples of such doubts raised by the experts are two articles published by Anna Zielińska and Andrzej Polaszek. In her article, Anna Zielińska pointed at various possible shortcomings of the amended SAE of 1991,

¹ Act of 19 March 2009 amending the Polish School Education Act, Dz. U. 2009, No. 56-458. Cf. Król, Kuzior, Łyszczarz (2011), pp. 171-183; Pilich (2013), pp. 310-313.

² The matter of mandatory annual classification examinations is regulated in Article 16 Paragraph 11 SAE. The provisions provide, that a child fulfilling the school obligation or compulsory education receives a certificate of promotion to a higher grade after the completion of the classification examinations based on the part of core curricula applicable on a specific stage of education, that are agreed for the specific school year with the school head. The examinations are conducted by the school, which head had permitted the fulfillment of school obligation or compulsory education out of school. Such children do not receive marks for their behavior (conduct), but - in accordance with Article 16 Paragraph 13 SAE - have the full right to participate in extracurricular educational activities at school. An important reference to executive regulations was included in Article 16 Paragraph 12 SAE, according to which the annual and final promotion of a pupil fulfilling the school obligation or compulsory education out of school is concluded in accordance with the provisions issued on the basis of Article 22 Paragraph 2 Subparagraph 4 SAE - currently the Regulation by the Minister of National Education of 30th April 2007 on Conditions and Rules for Pupil Evaluation, Eligibility for Assessment, Promotion and Examinations and Tests in Public School is applied in this regard (Dz. U. 2007, No 83-562).

mentioning for instance: the unclear scope of opinion issued by the psychological and pedagogical counselling center as well as the unspecified nature of ground for withdrawal of the permission based on non-attendance or “negative result of classification examination” – particularly in relation to the youngest pupils¹. More extensive criticism towards the amended SAE came from Andrzej Polaszek, who stressed in his article that “the amendments did not remove the fundamental flaws of the existing regulations”. In particular, the necessity of obtaining a special permission allowing the home based education from the school head by parents (which was also kept in force after coming into force the Act of 22nd March 2009) and the parents’ obligation to have their child admitted to a public or non-public school prior to their application for the homeschooling permission were assessed negatively. As in Anna Zielińska’s article harsh criticism was directed also against the unclear legal nature of the parental obligation to submit an opinion from the psychological and pedagogical counselling center and the inevitability of attending mandatory annual certification examinations².

Finally, it should be noted that proponents of home education emphasize the fact that – in accordance with the current regulations of 2009 the permission for homeschooling may be issued not only by the school head from the district the child lives in, but also by every head of a public or a non-public school to which the child has been admitted. The homeschooling practitioners also note that the matter of recognizing the school head’s permission as an administrative decision – with regulated appeal proceedings – has been finally clarified³. The amendments of 2009 went therefore in the same direction as the jurisdiction of Supreme Administrative Court already described above. However, other commentators (Król, Kuzior, Łyszczarz, 2011, p. 183) have noticed that issuing homeschooling permission by heads of all non-public schools and kindergartens, may raise doubts about possibility of equaling these “decisions” with the term of “administrative decisions”, as referred to in the Polish provisions.

Current situation and new amendments

Over the past decade the issue of home based education has experienced growing interest from the legal scholars’ perspective, although the number of publications is still unimpressive. Apart from legal commentaries on educational law a few articles devoted

¹ Zielińska (2009), pp. 483-490.

² Polaszek (2011), pp. 66-68. Both aforementioned authors dedicated separate paragraphs of their articles to the issue of the legal nature of school head’s permission to conduct home based education, as described in Article 16 Paragraph 8 SAE. They appreciated the fact of removing from the amended Act the head’s entitlement to “define the conditions” of fulfilling the compulsory education out of school. This removal – as the authors stressed – reduced the interference of the administrative bodies in the process of child’s education. At the same time A. Polaszek was disappointed with the final shape of the amended Act and the use of phrase “may permit” referring to the school head’s competence to issue a permission, since the original draft legislation had contained a more restrictive phrase: “permits – by the way of administrative decision”.

³ Polaszek (2011), p. 65.

to this matter should be noted. Tomasz Bąkowski analyzed the issue of homeschooling, basing on the principle of subsidiarity, while Adam Bochentyn searched for the connections between home based education and process of privatization of public tasks¹. Other authors mentioned this issue within broader research focused on compulsory education². An article by Michał Możdżeń – Marcinkowski is worth noting, since the author concentrated on the matter of administrative policy and Constitutional background for homeschooling³.

Despite recent amendments to the SAE of 1991, parents’ attempt to conduct home school education can still lead to lengthy litigations in Poland. One of such cases started some time before the adoption of Act of 19th March 2009 when the pupil’s parents applied for the permission to teach their daughter out of school. After the amended regulations of CAE came into force, the school head required the parents to file an opinion from the psychological and pedagogical counselling center – as referred to in the new Article 16 Paragraph 10 SAE. However, the child failed to attend the examination in the allotted time and – because of the absence of the opinion – the school head refused to issue permission for homeschooling. After the decision was upheld by the public administration body at higher level (Regional Education Superintendent), the parents filed a complaint to Voivodship Administrative Court in Lublin. They pointed that they had applied for the permission for homeschooling before the amendments to SAE were adopted in March 2009, so the administration body (school head) should have had applied the provisions which had been in force at that time. However, their complaint was dismissed. The Administrative Court was of the opinion that because the Act of 19th March 2009 did not contain transitional provisions, the new provisions – more rigorous – were applied also to the cases started before the adoption of the amendments. Therefore filing the psychological opinion was necessary for obtaining the permission⁴.

Subsequently, the parents filed a complaint of cassation. The complaint was successful and the Supreme Administrative Court in Warsaw set aside the contested verdict and referred the case back for reconsideration to the Voivodship Court, because of the violation of procedural provisions – particularly the provisions of the Polish Code of Administrative Proceedings (hereinafter referred to as: CAP)⁵. In particular the administration bodies made in this case no use of an already existing opinion from the psychological and pedagogical counselling center about this particular student, which had been prepared a few years earlier and remained at the disposal of the school administration⁶. The case returned to the Voivodship Administrative Court, which followed the Supreme Administrative Court’s interpretation of law and revoked the

¹ Bąkowski (2004), pp. 19-29; Bochentyn (2012), pp. 49-60.

² Cf. for instance: Babiuch (2005), pp. 69-88; Piskorski (2011), pp. 53-60; Stanulewicz (2011), pp. 9-18.

³ Możdżeń-Marcinkowski (2008), pp. 473-484. Article also contains interesting postulates *de lege ferenda*.

⁴ Verdict of the Voivodship Administrative Court in Lublin, 11 March 2010 (case No. III SA/Lu 517/09).

⁵ Consolidated version: Code of Administrative Proceedings, Dz. U. 2013, Pos. 267 (with further amendments)

⁶ Verdict of the Supreme Administrative Court, 17 August 2010 (case No. I OSK 898/10).

challenged decisions. The Regional Education Superintendent attempted to contest the verdict, but the complaint of cassation was dismissed¹.

The ongoing legislative work aimed to partially meet further expectations of Polish homeschooling practitioners. One of such matters was the resignation from the obligation of applying for the permission to conduct home based education in the next school year no later than by the 31st May. Draft legislation, concerning the multiple amendments of various aspects of SAE of 1991 was introduced by a group of *Sejm* deputies in January 2014 and received support from Donald Tusk’s government. According to the proposed amended version of the SAE the permission for home based education could be issued “before the beginning of the school year or during the school year”, so the parents would be able to apply for the permission during the whole year. In the statement of reasons of the draft legislation the intention to expand the scope of parents’ role in child’s education was emphasized, as well as the importance of the proposed regulations for some specific groups of families – like children returning to Poland after living abroad or starting their compulsory primary school education at age of 6. The proposed Act was passed by Polish Sejm in March 2014 and some subsequent amendments were adopted by the Senate². The Act came into force in June 2014³.

Conclusions

As indicated above, the Polish legislation in the field of home education has evolved considerably since the introduction of SAE in 1991. Currently, homeschooling in Poland finds itself in a very interesting situation. As pointed by pioneering Polish practitioner of homeschooling, M. Budajczak, the number of parents interested in this form of education has significantly increased within the last few years⁴. Although it is difficult to verify these data, it should be stated, that the issue of home based education in Poland no longer affects only an extremely small group of parents. This trend will probably continue in next years because of aforementioned new factors (like the beginning of compulsory primary school education at age of 6), which may prompt some parents to undertake homeschooling. In author’s opinion the amendments of SAE (of 2009 and 2014) have simplified the procedure of applying for homeschooling permission, although some obstacles (like the discretionary nature of school head’s decision) still remain. Time will tell if the current provisions concerning the obligatory opinions from psychological and pedagogical counselling centers as well as classification examinations prove efficient and not too harsh for the parents.

Finally, a question should be asked, whether the recent amendments of 2014 are only a step forward in the process of gradual liberalization of the education law provisions? It is

¹ Verdict of the Voivodship Administrative Court in Lublin, 9 December 2010 (case No. III SA/Lu 444/10) and Verdict of the Supreme Administrative Court, 8 June 2011 (case No. I OSK 385/11).

² Sejm Paper No. 2132 from 24.01.2014 (7h Term of Office), pp. 15-17 – with further opinions etc.

³ Act of 24 April 2014 amending the Polish School Education Act, Dz. U. 2014, pos. 458

⁴ A. Grabek, B. Marczuk, Domowa szkoła to nie więzienie. Rzeczpospolita – 22.06.2013 [accessed 29.04.2014] - < <http://www.rp.pl/artykul/1022379.html?print=tak&p=0>>.

important to note that the issue of home education is attracting a growing interest from Polish legal scholars, so it can be expected that the future will bring more balanced studies on the legal aspects of home education in its wake.

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