

THE IMPLEMENTATION OF CHILDREN'S RIGHTS IN CORRELATION WITH PARENTAL RIGHTS IN THE UPBRINGING PROCESS: THE POLISH PERSPECTIVE

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The subject matter of the present study is the examination of children's rights in correlation with parents' rights in the upbringing process. As it is assumed, the right of the parents to raise their children in accordance with their convictions belongs to the basic categories of rights that are guaranteed to parents and legal guardians at the normative level by the international community and the national legislator. The author analyses the current normative solutions in Poland from a national and international perspective. The first part of the study explains the basic concepts, i.e., family, upbringing, child or convictions. The second part presents the basic normative solutions applicable in the area of parental authority, education, and the rights to which a child is entitled. The whole study ends with a summary presenting conclusions of the analysis of the discussed issues.

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1 Terminological Remarks

The parental right to raise their children in accordance with their convictions is a fundamental category of rights guaranteed to parents and legal guardians at the normative level by the international community and national legislators. A detailed analysis of particular legal solutions involves their consideration from multiple perspectives. Indeed, the legislator's accurate guarantees at the normative level seem to be the primary issue. Consequently, adequate normative regulations should include both the interactions between parents and broadly understood authorities and institutions representing them, as well as interpersonal relationships. These regulations concern the rights towards third parties that may interfere with the upbringing process, as well as the correlation of mutual interests with the child being under parental authority.

The upbringing of a child is generally associated with their development within a family. However, some circumstances lead to the parents' divorce or separation; as a result, the upbringing process is somehow altered. A child may grow up in a new family of one of the parents, while the other parent influences their upbringing process through agreed-upon contact arrangements. Additionally, a joint custody arrangement may be established, whereby the child spends equal time with both parents, who jointly decide on their upbringing.

The term "family" is a normative concept in Polish law; however, neither the Act of 25 February 1964 – the Family and Guardianship Code (hereinafter: FGC)¹, nor the Constitution of the Republic of Poland² provides a legal definition of the term. The attempt to specify the definition of the "family" can be found in the Act of 12 March 2004, on Social Assistance (hereinafter: SAA).³ According to Article 6(14), the family includes persons who are related or not related to each other, together residing and hosting. Thus, the scope of individuals forming a family is not limited only to parents and their children. Furthermore, the Act of 28 November 2003, on Family Benefits

¹ The Act of February 25, 1964 – the Family and Guardianship Code [Ustawa z dnia 25 lutego 1964 r., Kodeks rodzinny i opiekuńczy] (consolidated text: Dz. U. - Journal of Laws of 2023, item. 2809).

² The Constitution of the Republic of Poland of April 2, 1997, [Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.] (Dz. U. - Journal of Laws of 1997, No. 78, item 483 as amended).

³ The Act of March 12, 2004, on Social Assistance. [Ustawa z dnia 12 marca 2004 r. o pomocy społecznej] (consolidated text: Dz. U. - Journal of Laws of 2024, item 1283, as amended).

(hereinafter: FBA)⁴ specifies the entities entitled to receive family benefits. According to Article 3(16), a family consists of spouses, parents, children, the child's actual guardians, children up to the age of 25, and children after the age of 25 with a certificate of a significant degree of disability if, due to this disability they are entitled to care benefits or special care allowance.

In European Union law, the definition of "family" is further clarified in Directive 2004/38/EC.⁵ According to Article 2, a "family member" means: (a) the spouse; (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State; (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b); (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b); Directive 2014/54/EU also refers to this definition.⁶

Polish Constitution proclaims in Article 18 the principle of protecting families, motherhood, and parenthood. Furthermore, everyone shall have the right to legal protection of their private and family life, of their honour and good reputation, and to make decisions about their personal life (Article 47 of the Polish Constitution). The State is obligated to take into account the good of the family in its social and economic policy. Families, finding themselves in complex material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from the public (Article 72(1) of the Polish Constitution). Additionally, the rights specified in Article 72 of the Polish Constitution cannot be restricted even during states of emergency or martial law (Article 233(1) of the Polish Constitution).

⁴ The Act of November 28, 2003, on Family Benefits [Ustawa z dnia 28 listopada 2003 r. o świadczeniach rodzinnych] (consolidated text: Dz. U. - Journal of Laws of 2024, item 323, as amended).

⁵ Directive 2004/38/EC of the European Parliament and the Council of April 29, 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC, and 93/96/EEC (Official Journal of the EU L 158, p. 77).

⁶ Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (Official Journal of the EU L 128, p. 8).

Upbringing is a normative category included in the canon of rights granted to parents at the international and national standards of legal solutions. Although the legislator frequently employs the term "upbringing", its legal definition has not been defined. Therefore, to clarify the essence and scope of this concept, it is necessary to refer to disciplines other than law, along with doctrinal positions and judicial interpretations. Agnieszka Salamucha notes that, on the one hand, the term is central in pedagogy because it defines its subject matter. Still, on the other hand, pedagogy contains very few terms as ambiguous as "upbringing".⁷ According to Romana Miller, upbringing includes: searching for meaning in life, socialization, development, maturing for responsibilities, interpreting life experiences, guidance, involvement in personality formation, creation (self-transformation and environmental transformation) and preparing a human being for life in specific times.⁸

The legal doctrine and judiciary also specify the interpretation of this term. According to the doctrine, as interpreted in light of Article 48(1) of the Polish Constitution, upbringing means infusing and reinforcing a specific worldview, beliefs, value system, and moral and ethical norms in children through the conscious actions of parents.⁹ The purpose of upbringing is to shape young individuals according to the will of their parents and legal guardians. However, this is not an absolute right, as it is subject to limitations arising from the child's autonomy and the State's fundamental responsibilities.

According to the Constitutional Tribunal, upbringing is a category of parental rights. This duty includes not only the right to custody of the child but also the right to manage their belongings and represent them.¹⁰ The doctrine also emphasizes another aspect of upbringing: it is treated not only as a right but also as a duty that lasts until the child reaches the age of 18, allowing the child to demand appropriate upbringing from their parents.¹¹ If parents or legal guardians fail to provide such care, the child has a right to receive assistance provided by public authorities (Article 72(2) of the Polish Constitution). Some doctrinal views suggest that this issue should be framed more accurately as a state obligation.¹²

⁷ Salamucha, 2024, p. 31.

⁸ Miller, 1981, pp. 114–153, more on discussion of the concept of upbringing, see de Tchorzewski, 2018.

⁹ Florczak-Wątor, 2019.

¹⁰ Judgment of the Constitutional Tribunal of 21 January, 2014, SK 5/12, OTK-A 2014, No. 1, item 2.

¹¹ Florczak-Wątor, 2019.

¹² Mostowik, 2014, p. 28.

The term 'child' as a reference point for all parental rights must be interpreted within the framework of legal definitions. Under the Act of 6 January 2000, on the Ombudsman for Children's Rights¹³, a child is defined as any human being from conception to the age of majority (Article 2(1)). The Convention on the Rights of the Child¹⁴ (hereinafter: CRC) defines a 'child' as every human being below the age of eighteen years unless, under the law applicable to the child, the majority is attained earlier (Article 1). In Polish law, this exception applies to a female who, after reaching the age of 16 and with court permission, enters into marriage, thereby attaining legal majority, which is not revoked even if the marriage is annulled (see: the Article 10(2) of the Civil Code¹⁵ in conjunction with the Article 10(1) of the Family and Guardianship Code).

The term 'convictions' has been clarified in the case law of the European Court of Human Rights (hereinafter: ECtHR) under Article 9 of the European Convention on Human Rights (hereinafter: ECHR) and Article 2 of Protocol No. 1 to the Convention.¹⁶ In the case of *Ejstratou v. Greece* (18 December 1996), the ECtHR stated that 'convictions' are not synonymous with 'opinions' or 'concepts' but rather denote views that attain a certain level of firmness, seriousness, coherence, and importance. Furthermore, they emphasized that the State must respect parental convictions, whether religious or philosophical, in the educational system. This obligation is broad and applies not only to curriculum content but also to the implementation of all educational functions. For the ECtHR, 'to respect' implies more than 'to acknowledge' or 'to take into account'; it involves the existence of positive obligations of the State.¹⁷

In the judgment of 18 March 2011, *Lautsi v. Italy*, the ECtHR, referring to the interpretation of the term *respect* in the context of Article 8 of the ECHR, noted that its meaning would vary significantly depending on the legal system of a particular State. Consequently, states enjoy a wide margin of interpretation when determining

¹³ The Act of January 6, 2000, on the Ombudsman for Children's Rights, [Ustawa z dnia 6 stycznia 2000 r. o Rzeczniku Praw Dziecka] (consolidated text: Dz. U. – Journal of Laws of 2023, item 292).

¹⁴ The Convention on the Rights of the Child of November 20, 1989, (Dz. U. – Journal of Laws of 1991, No. 120, item 526, as amended).

¹⁵ The Act of April 23, 1964, the Civil Code, [Ustawa z dnia 23 kwietnia 1964 r., Kodeks cywilny], (consolidated text: Dz. U. – Journal of Laws of 2024, item 1061).

¹⁶ Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of March 20, 1952 (Dz. U. – Journal of Laws of 1995, No. 36, item 175).

¹⁷ Complaint No. 24095/94, LEX No. 79871.

the steps that may be taken to ensure appropriate solutions are consistent with the Convention. Furthermore, respect for parents' religious convictions and children's beliefs involves the right to believe in a given religion or to abstain from any religious belief. Both the freedom to believe and the freedom not to believe are equally protected¹⁸.

2 Normative Regulations

Parental and legal guardians' rights to determine the framework of their children's upbringing are a normative category recognized at the international and national legislative levels. Existing regulations present a significant degree of similarity; however, a comprehensive approach to this issue requires a separate reference to these particular legal solutions.

2.1 International Law

The Universal Declaration of Human Rights¹⁹, despite its non-binding character, has become a model for many solutions adopted by both national and international legislators. Although Article 26(3) does not explicitly mention "upbringing," it grants parents the primary right to choose the type of education for their children. The International Covenant on Civil and Political Rights (Article 18(4))²⁰ and the International Covenant on Economic, Social, and Cultural Rights (Article 13(3)) ensure parents have the right to provide religious and moral education to their children in accordance with their convictions.²¹ Correspondingly, Article 2 of Protocol No. 1 to the ECHR recognizes the right of parents to ensure education and teaching in accordance with their own religious and philosophical convictions. The Charter of Fundamental Rights of the European Union expands the scope of these convictions by including 'pedagogical convictions' (Article 14(3)). The CRC locates parental rights within the broader context of children's rights. The concept of "upbringing" is complemented by the term "appropriate direction and guidance" of the child (Article 5 of the CRC). The CRC treats upbringing as a parental duty.

¹⁸ Complaint No. 30814/06, LEX No. 784874.

¹⁹ Universal Declaration of Human Rights of December 10, 1948, retrieved from: <http://libr.sejm.gov.pl/tek01/txt/onz/1948.html> (February 1, 2025).

²⁰ The International Covenant on Civil and Political Rights of December 19, 1966 (Dz. U. – Journal of Laws of 1977, No. 38, item 167).

²¹ The International Covenant on Economic, Social, and Cultural Rights of December 19, 1966. (Dz. U. – Journal of Laws of 1977, No. 38, item 169).

Article 18(1) states that all best efforts shall be used to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. The best interests of the child will be their basic concern. Moreover, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities, and services for the care of children (Article 18(2) of the CRC). The State's responsibilities have been expanded to include taking 'all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child' (Article 19(1) of the CRC). The CRC granted children a range of rights, some of which were previously the exclusive prerogative of parents and legal guardians. Some countries, including Poland, interpreted this as a potential threat to parental authority and the child-rearing process. Consequently, when ratifying the CRC, Poland submitted the following declaration: *"The Republic of Poland considers that a child's rights as defined in the Convention, in particular the rights defined in articles 12 to 16, shall be exercised with respect for parental authority, in accordance with Polish customs and traditions regarding the place of the child within and outside the family."*²² Although this declaration does not have binding legal force, it illustrates the intentions and concerns of the Polish legislator.

2.2 Polish Law

Norms included in international regulations function as a reference point for the standards adopted by the Polish legislator.

2.2.1 Upbringing and Parental Authority

The Constitution of the Republic of Poland of 1997 includes the above-mentioned international legal standards and addresses the issue of upbringing in Articles 48(1) and 53(3). Article 48(1) of the Polish Constitution generally refers to the 'upbringing'

²² Rights considered: the right to freely express views on all matters affecting the child (Article 12(1) CRC); the right to be heard in any judicial and administrative proceedings (Article 12(2) CRC); freedom of expression (Article 13(1) CRC); freedom of thought, conscience, and religion (Article 14(1) CRC); freedom of association (Article 15 CRC); protection of privacy, family life, home, and correspondence, unlawful attacks on his or her honour and reputation. (Article 16 CRC).

in accordance with parents' convictions without specifying the particular matters it should cover. However, the legislator specifies that upbringing must take into account the child's maturity level, freedom of conscience and religion, and personal convictions. Furthermore, Article 53(3), recommending the appropriate application of Article 48(1), specifies that parental rights should include moral and religious upbringing and teaching. The scope of upbringing and the nature of parental authority in Poland are further clarified by the provisions of the Family and Guardianship Code (hereinafter: FGC). According to Article 27 of the FGC, both spouses are required, according to their abilities and earnings, and financial capacities, to help satisfy the needs of the family. Fulfilling this obligation may include personal efforts to raise children and manage the common household. Furthermore, in a divorce ruling, the Court decides on parental authority over the shared minor child of both spouses and the parents' contact with the child. The Court also determines the financial obligations of each spouse regarding the maintenance and upbringing of the child (Article 58(1) of the FGC). When deciding on parental authority, the Court must also consider the child's right to be raised by both parents and determine how parental authority and contact shall be exercised after the divorce (Article 58(1a) of the FGC). The manner in which a child's upbringing is closely related to the implementation of parental authority. In legal writings, parental authority is defined as natural relations between the child and both parents, including the child's upbringing, personal care over them, management of their belongings, and their legal representation.²³ Article 95(1) of the FGC specifies that the exercise of parental authority must respect the dignity and rights of the child. The guiding principles for implementing parental authority are the best interests of the child and social interest (Article 95(3) of the FGC), as well as the child's intellectual development, health, and level of maturity (Article 95(4) of the FGC).

Furthermore, the law distinguishes two categories of matters that define the parent-child relationship in the upbringing process. The first category covers circumstances when the child can make binding decisions independently. The second category consists of matters that fall under the authority of parents and legal guardians (discussed later in the present paper). Concerning the first group, the Family and Guardianship Code states that the child should consider the opinions and

²³ Mostowik, 2014, p. 54.

recommendations of parents formulated for his/her benefit. As for the second category, the child is obliged to obey their parents (Article 95(2) of the FGC).

On the basis of analysis of the above-mentioned legal provisions, it can be claimed that parental rights regarding the form of upbringing and decision-making are not absolute. One of the primary reference points in this regard is the child's rights, which are dependent on the degree of the child's maturity.

2.2.2 Education

Parents are obligated to realize their duty to the State in implementing their rights concerning education. One of the duties is the fulfillment of the obligation of education and schooling for their children. According to Article 70(1) of the Constitution of the Republic of Poland, education up to 18 years of age shall be compulsory. The fulfillment of this obligation is regulated by the Act of 14 December 2016 – Education Law (hereinafter: EL).²⁴ According to Article 35(2) of the EL, a child's compulsory education starts at the beginning of the school year in the calendar year when they turn seven and continues until they complete primary education, but no longer than reaching the age of 18. According to Article 40 of the EL, parents of a child included in the compulsory education must fulfill specific obligations. Firstly, they must complete the necessary enrollment procedures. Secondly, they are required to ensure the child's regular attendance at school. Thirdly, they must provide sufficient conditions that contribute to the child's appropriate preparation for classes. Lastly, they are responsible for informing the school principal about the form in which the compulsory education is being fulfilled. Parents, in exercising their rights, may decide (Articles 40(1) and (2) of the EL) whether their child begins education at the age of six (Article 36(1) of the EL) or whether this beginning is postponed for one school year (Article 36(4) of the EL). If parents decide that their child shall attend school at the age of six, the principal's approval is dependent on the fact if the child previously attended preschool education in the preceding school year or if the child possesses an opinion from a psychological-pedagogical counseling center confirming his/her readiness for primary education (Article 36(2)(1) and (2) of the EL). In cases of deferral of the schooling obligation, the school principal must unconditionally respect the will of

²⁴ The Act of December 14, 2016, Education Law [Ustawa z dnia 14 grudnia 2016 r., Prawo oświatowe] (consolidated text: Dz. U. – Journal of Laws of 2024, item 737).

the parents or legal guardians (Article 36(4) of the EL). The consequence of the respect for parents' rights to raise their children in accordance with their convictions includes the freedom to choose also non-public schools (Article 70(3) of the Polish Constitution; Article 13(3) of the International Covenant on Economic, Social, and Cultural Rights). It is important to point out that the duty to ensure access to various types of schools falls on the state authorities. However, as noted in the legal doctrine, this right is not horizontal in nature; it means that non-public schools may impose additional admission criteria, which may be inconsistent with parents' convictions. For instance, non-public schools may require students to belong to a particular religious denomination.²⁵ On the basis of the right to determine the shape of a child's upbringing process, some doubts regarding the scope of parental influence over educational content appear. The Education Law provides certain rights to parents in this respect. The representative body for parents and legal guardians in schools and educational institutions is the Parents' Council (Article 83 of the EL). According to Article 84(1) of the EL, the Parents' Council may submit requests to the school principal, school authorities, the governing body of the school, or the supervising pedagogical authority regarding all matters concerning the school. The council's competencies include: approving, in consultation with the teaching board, the school's educational and preventive program; providing opinions on plans for improving educational effectiveness; and reviewing the proposed financial plan (Article 84(2) of the EL). The Parents' Council also provides opinions on the implementation of pedagogical innovations, which involve modifying existing or introducing new educational, organizational, methodological, or pedagogical measures (Article 45 of the EL).

Organizations operating within schools may also significantly influence the process of shaping students' values. The legislator specifies that these organizations cannot represent any political parties. However, various associations and organizations, particularly scouting organizations, whose statutory objective includes educational activities or the expansion of educational, instructional, caregiving, and innovative initiatives, are permitted. Nevertheless, such organizations must obtain the approval of both the School Council and the Parents' Council to operate within a school (Article 86 of the EL). The School Council, a non-mandatory body, consists of teachers, parents, and students. All representatives are elected from the people

²⁵ Derlatka, 2016.

belonging to a given community (Article 81 of the EL). In the context of the upbringing process, the School Council holds significant entitlements, including: the adoption of the school's statute; submission of requests to the supervising pedagogical body for the assessment of school activities; providing opinions on school work plans and pedagogical experiments; and addressing other important matters concerning the school.

Additionally, based on its own assessment of the school's situation and condition, the School Council may request the appropriate authorities for the issues regarding the organization of specific activities (Article 80(2) of the EL). The activities of bodies consisting of parents are primarily limited to providing opinions. Competent entities, such as the school principal or supervising authorities, are generally not dependent on parental opinions, except for specific instances, such as approving organizations operating within schools. Increasingly, however, parents go beyond the scope of rights regulated in lower-level laws and legal acts and refer to general principles specified in the Constitution of the Republic of Poland or international agreements. Parental opposition frequently concerns the educational model imposed by state authorities in official curricula and optional classes available to students. Legal disputes related to parental rights to educate their children in accordance with their convictions primarily revolve around two fundamental issues: the first one is the sex education in schools and the rights of sexual minorities; the second one is the presence of religious content in school curricula.

In one of its rulings, the Constitutional Tribunal stated that "knowledge imparted in schools does not necessarily have to be inconsistent with parents' convictions, but the Constitution neither guarantees nor can guarantee that the knowledge conveyed in schools will be in accordance with parents' convictions"²⁶. This means that the State has complete discretion in determining curriculum content without the obligation to consider parental will. The presented content may align with their views, but there is no constitutional impediment when those views are contradicted.

²⁶ Judgment of the Constitutional Tribunal of May 27, 2003, K 11/03, OTK-A 2003, No. 5, item 43.

The issue of sex education in Polish schools is regulated by the Act of 7 January 1993, on Family Planning, Protection of Human Fetus, and Conditions of Permissibility of Abortion²⁷, as well as its implementing regulation.²⁸ According to Article 4 of the Act, school curricula include knowledge about human sexuality, principles of responsible and conscious parenthood, the value of family life, prenatal life, methods and means of conscious procreation. The regulation clarifies that such classes are not conducted in grades I-III of primary school (§ 1(2)). Additionally, the program content must be integrated with the school's comprehensive educational and preventive efforts, particularly supporting the educational role of the family, promoting a comprehensive understanding of human sexuality, and fostering pro-family, pro-health, and pro-social attitudes (§ 2 of the regulation). The decision to allow minor students to attend these classes is left to the will of parents. They are supposed to submit a written resignation to the school principal. Otherwise, a minor student is required to participate in these classes, although they are not graded and do not influence the student's academic promotion or school completion. Similarly, an adult student may decide not to participate in these classes by submitting a declaration to the school principal (§ 4 of the regulation). It seems that the optional nature of these classes allows both parents of minor students and adult students to withdraw at any time. However, the regulation does not explicitly state this. It also seems possible for students to rejoin the classes during the school year, although the existing provisions do not regulate this.

The correlation of mutual rights between the child and parents in the educational sphere also extends to the organization of religious education and the presence of confessional elements in public educational institutions. In Polish law, the status of religious education is regulated by normative acts of various legal ranks. The Polish Constitution establishes the optional nature of religious education in the educational system. According to Article 53(4) of the Constitution, "The religion of a church or

²⁷ The Act of January 7, 1993, on Family Planning, Protection of Human Fetus, and Conditions of Permissibility of Abortion [Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży], (consolidated text Dz. U. – Journals of Laws of 2022, item 1575).

²⁸ Regulation of the Minister of National Education of August 12, 1999, on the method of school teaching and the scope of content regarding knowledge of human sexuality, principles of responsible parenthood, family values, prenatal life, and methods and means of conscious procreation contained in the core curriculum of general education (Annex to the announcement of the Minister of Education and Science of October 27, 2023), [Rozporządzenie Ministra Edukacji Narodowej z dnia 12 sierpnia 1999 r., w sprawie sposobu nauczania szkolnego oraz zakresu treści dotyczących wiedzy o życiu seksualnym człowieka, o zasadach świadomego i odpowiedzialnego rodzicielstwa, o wartości rodziny, życia w fazie prenatalnej oraz metodach i środkach świadomej prokreacji zawartych w podstawie programowej kształcenia ogólnego (Załącznik do obwieszczenia Ministra Edukacji i Nauki z dnia 27 października 2023 r.)] (Dz. U. - Journal of Laws of 2023, item 2431).

other legally recognized religious organization may be taught in schools, but other people's freedom of religion and conscience shall not be infringed thereby'. In addition to constitutional provisions, the presence of catechesis in the educational system is ruled by religious statutes regulating the status of particular churches and religious associations. Furthermore, these matters are regulated by EL. According to Article 12(1) of the Act on the Education System²⁹, public preschools and primary schools organize religious education at the request of parents, while public secondary schools provide it at the request of either parents or students themselves; after reaching the age of majority, students decide independently. A crucial consideration in interpreting this provision concerns secondary schools, where both parents and minor students may make binding decisions. The implementation of regulations on the organization of religious education further clarifies these provisions.³⁰ According to § 3(1), schools must provide ethics classes for students whose parents or who themselves express such a preference. Both religious education and ethics are optional subjects; thus, schools are required to provide care or other educational activities for students who do not participate in these lessons (§ 3(3)).

The ECtHR has repeatedly analyzed the issue of religious education in schools. One of the key issues emphasized by the ECtHR is the equal status of religious education and other subjects, assuming that the State decides to introduce religious education into the educational system. In the case of *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, the ECtHR stated that 'Article 2 of Protocol No. 1 of the ECHR, which applies to the role of the state in education and teaching, does not permit a distinction between the teaching of religion and other subjects'. Furthermore, the ECtHR recognizes that religious elements may be present in school curricula and that parents cannot object to such practices. Granting parents such a right could lead to the failure of the entire educational system.³¹

²⁹ The Act on the Education System of September 7, 1991, [Ustawa z dnia 7 września 1991 r. o systemie oświaty] (consolidated text: Dz. U. – Journal of Laws of 2024, item 750).

³⁰ Regulation of the Minister of Education of July 26, 2024, amending the regulation on the conditions and methods of organizing religious education in public preschools and schools, [Rozporządzenie Ministra Edukacji z dnia 26 lipca 2024 r. zmieniające rozporządzenie w sprawie warunków i sposobu organizowania nauki religii w publicznych przedszkolach i szkołach] (Dz. U. – Journal of Laws of 2024, item 1158).

³¹ Judgment of the ECtHR of December 7, 1976, Complaints No. 5095/71, 5920/72, 5926/72, LEX No. 80800. Similarly, in the case of *W. Dojan, A. Dojan, and D. Dojan v. Germany*, LEX No. 523579.

The issue of displaying crosses in classrooms has been addressed in two judgments of the ECtHR in the case of *Lautsi v. Italy*. A mother of children attending an Italian school complained, claiming that the display of a religious symbol in classrooms violated her right to educate her children in accordance with her convictions and subjected them to indoctrination. After unsuccessful litigation in Italian courts, the case reached the ECtHR. In its initial judgment of 3 November 2009, the ECtHR considers that

*"the compulsory display of a symbol of a particular faith in the exercise of public authority in relation to specific situations subject to governmental supervision, particularly in classrooms, restricts the right of parents to educate their children in conformity with their convictions and the right of schoolchildren to believe or not believe. It is of the opinion that the practice infringes those rights because the restrictions are incompatible with the State's duty to respect neutrality in the exercise of public authority, particularly in the field of education."*³²

However, in its subsequent judgment of 18 March 2011, the ECtHR revised its position, stating that the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum.³³

The right of parents to raise their children in accordance with their convictions is subject to limitations when the State exercises its authority in the field of education. The ECtHR clarifies the position that parents' religious and philosophical convictions are their private matters; therefore, they may freely convey their worldview to their children within the privacy of their homes. In the public sphere, such as schools, parents must accept the fact that the final decision is made by particular bodies representing the state authorities. Consequently, when exercising its prerogatives, the State may impose certain curriculum content that is not always in line with parents' beliefs. However, in relation to the authorities, there should be some freedom of choice in optional classes that may interfere with the sphere of parents' beliefs.

³² Judgment of the ECtHR of November 3, 2009, 30814/06 - LEX No 523579

³³ *Lautsi v. Italy* - ECtHR judgment of March 18, 2011, Complaint No. 30814/06, [in:] M.A. Nowicki, European Court of Human Rights. Selection of Judgments 2011, LEX, 2012, p. 470.

2.2.3 Children's Rights

The previously analyzed Article 48, in conjunction with Article 53(3) of the Polish Constitution, grants parents the right to provide their children with moral and religious upbringing and education in accordance with their own convictions. However, this upbringing must consider the child's level of maturity, as well as their freedom of conscience, religion, and personal beliefs. As stated by the Constitutional Tribunal in one of its rulings, referring to the opinion of Paweł Sarnecki, Article 48(1) of the Polish Constitution is essentially a 'praxeological provision, formulating what is presumably a long-established rule of the educational process.' According to the Constitutional Tribunal, 'parents who fail to take these factors into account would cease to educate their children creatively and positively. The right (and duty) of parents to raise their children remains intact, although it must naturally include appropriate responses to new situations'.³⁴

According to Article 12 of the CRC,

'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'.

The references to the necessity of considering the child's level of maturity are also recognized in the jurisprudence of the Court of Justice of the European Union (hereinafter: CJEU). In its judgment of 6 December 2012, it was stated that: the ECtHR takes into account numerous individual circumstances related to the child in order to determine their best interests and ensure their well-being. It particularly considers the child's age and maturity level, as well as the degree of dependence on their parents, paying close attention to their presence or absence.³⁵

From a systemic interpretation perspective, there are legal provisions specifying the age at which a child acquires the capacity to undertake legally effective actions. Some regulations refer to a child's ability to exercise political rights, enabling them to participate in civil society and become full-fledged members thereof. According to

³⁴ Judgment of the Constitutional Tribunal of December 2, 2009, U 10/07, OTK-A 2009, No. 11, item 163.

³⁵ Judgment of the CJEU of December 6, 2012, C-356/11, *O. and S. v. Maabannmuuttovirasto and Maabannmuuttovirasto v. L.*, "Collection of Judgments of the Court of Justice and the Court," 2012, No. 12, p. I-776.

Article 3(2) of the Act of 7 April 1989 – the Law on Associations³⁶, minors aged 16 to 18, possessing limited legal capacity, may join associations and exercise both active and passive electoral rights, allowing them to vote and be elected to association authorities. However, the management board must include individuals with full legal capacity, and they must constitute the majority.

On the basis of the Banking Law Act of 29 August 1997³⁷, a minor holding a savings account, a savings and settlement account, or a fixed-term savings deposit account may independently manage the funds in those accounts upon reaching the age of 13, unless their statutory representative expressly objects in writing (Article 58). Additionally, under Article 12(3) of the Act of 1 July 2005, on the Cell, Tissue and Organ Recovery, Storage and Transplantation³⁸, if a minor above 13 years old has to become a donor of bone marrow, then a consent given by the minor is required, in addition to the consent of their legal guardians and the Court. The same act stipulates that the objection of a minor aged 16 or older constitutes a negative prerequisite preventing the removal of cells, tissues, or organs from a deceased person (Article 6(3)).

A child's ability to make binding declarations is also regulated under the provisions of the FGC. According to Article 118(1) of the FGC:

'the consent of an adoptee who has reached the age of thirteen is required for adoption'.

Correspondingly, changing the surname of a child aged 13 or older requires their consent (Article 118 (1) of the FGC).

These are not all legal provisions that condition the validity of decisions on the attainment of a specified age. This overview does not include, for instance, the acquisition of limited legal capacity at the age of 13 or the possibility of entering into marriage with a female who has reached the age of 16, with Court approval.

³⁶ The Act of April 7, 1989, the Law on Associations, [Ustawa z dnia 7 kwietnia 1989 r., Prawo o stowarzyszeniach] (consolidated text: Dz. U. – Journal of Laws of 2020, item 2261).

³⁷ The Act of August 29, 1997, the Banking Law [Ustawa z dnia 29 sierpnia 1997 r., Prawo bankowe] (consolidated text: Dz. U. – Journal of Laws of 2024, item 1646).

³⁸ The Act of July 1, 2005, on the Cell, Tissue and Organ Recovery, Storage and Transplantation, [Ustawa z dnia 1 lipca 2005 r. o pobieraniu, przechowywaniu i przeszczepianiu komórek, tkanek i narządów] (consolidated text: Dz. U. Journal of Laws of 2023, item 1185).

The evaluation of the existing legal provisions proves that the Polish legislator acknowledges a child's ability to make autonomous decisions at different ages. Undoubtedly, one of the most significant rights within the child's educational process concerns the determination of their origins and information about their biological parents. These rights do not function cumulatively, and existing legal solutions define their scope in various ways. The rights granted to a child significantly influence the actions of adoptive parents and legal guardians, who should not obstruct the exercise of these rights by the child, even if unexpected consequences may arise.

3 Conclusion

On the basis of the presented content, the following conclusions can be drawn:

- a) The upbringing of a child is generally associated with their development within a family. However, there are some circumstances that lead to the parents' divorce or separation; as a result, the upbringing process is somehow altered.
- b) The parental right to raise their children in accordance with their convictions is a fundamental category of rights guaranteed to parents and legal guardians at the normative level by the legislator.
- c) The right to raise children in accordance with parental beliefs is conditioned on the exercise of parental authority or guardianship rights over the child, regardless of the family structure (family model) in which these rights are exercised.
- d) Upbringing should aim to shape a young person in accordance with the will of his/her parents and legal guardians. However, this is not an absolute right and it may be subject to limitations arising from the child's autonomy and the State's fulfillment of its fundamental functions.
- e) The Polish legislator recognizes that a child is capable of making autonomous decisions at different ages.

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