

Child's Freedom of Conscience and Religion vs. the Exercise of Parental Rights. Considerations on the Grounds of Religious, Family and International Law

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Introduction

The relationship between parental rights and the child's freedom is touched upon both in the Constitution of the Republic of Poland of 1997 and in the Convention on the Rights of the Child (hereinafter: CRC). Both documents proclaim the religious freedom of the child, based on the child's right to dignity, although they address the issue in a slightly different way. Pursuant to the Constitution, the parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well

as his freedom of conscience and belief and also his convictions¹. On the other hand, the Convention provides that States Parties shall respect the right of the child to freedom of thought, conscience and religion, and that they shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child². Although the Constitution imposes the obligation on the parents to respect the religious freedom of the child, observing their right to rear the child, the CRC directly recognizes the child as the subject of the law and obliges the State to respect this freedom and support both the child and parents in the implementation thereof. According to this law, the role of parents comes down to providing direction to the child in the exercise of the evolving capacities of the child. This guarantee provided for in Article 14 shall however be read in conjunction with Article 5, which stipulates that the States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention³.

The purposefulness of findings in this field is also justified by the wording of the declaration made by Poland in the Act ratifying the CRC. Pursuant thereto, the Republic of Poland considers that the exercise of child's rights as defined in the Convention, in particular the rights laid down in articles 12 to 16 shall be with respect for parental authority in accordance with the Polish customs and traditions regarding the place of the child within and outside the family. The difficulties associated with the interpretation of the aforementioned declaration are twofold. Firstly, it is difficult to identify its legal force, since according to the applicable hierarchy of sources of universally binding law (Article 87 of the Constitution), any legal force thereof should be denied and it should be regarded only as an interpretive clause. Secondly, there is no indication whatsoever what traditions and customs are meant. In

¹ The Constitution of the Republic of Poland of 2nd April 1997, as published in Journal of Laws No. 78, Item 483.

² The Convention on the Rights of the Child, adopted by the General Assembly of the United Nations of 20 November 1989 (Journal of Laws of 1991, No. 120, Item 526).

³ *Ibid.*, Article 5.

the jurisprudence, there is a view that the tradition shall be understood as demonstrating respect and obedience to parents.

2. The legal status of the child with regard to the parental authority

The Family and Guardianship Code (hereinafter: FGC) does not define parental authority, but merely indicates its scope. According to the regulations, it includes the right and the obligation of parents to exercise custody over the person and property of the child and to rear the child⁴. The lack of definition of this concept in the Family and Guardianship Code sparked great interest in this issue among jurisprudence researchers⁵. The prevailing view is that the essence of parental authority comes down to the relationship between parents and children as a combination of the parents' duties and powers towards the person and property of the child, aimed at ensuring proper care and protection of interests of the child.

The general rule for exercise of parental responsibility shall be the welfare of the child, as defined in Article 95 § 3 of the Family and Guardianship Code, which stipulates that parental authority should be exercised as required for the welfare of the child and for the social interest.

An extremely important issue is the child's duty of obedience towards the parents. According to the FGC, the child who remains under parental authority should obey the parents. Parents should strive to make the child conform to their will, taking into account the dignity of the child. However, where no verbal arguments appeal to the child, parents can enforce obedience through physical discipline without harming the mental or physical health of the child. It seems that the reliance on this argument in terms of enforcing obedience in the realm of exercise by the child of religious freedom can be very dangerous. Becoming aware of having committed the evil act may give better results than associating it with a slap, since it excludes the risk of "training", which involves forcing the desired behaviours under the influence of constantly repeated stimuli.

Generally, both parents are entitled to exercise the parental authority, which lasts until the child reaches the age of majority.

⁴ The Act of 25 February 1964, Family and Guardianship Code, Journal of Laws No. 9, Item 59.

⁵ J. Ignatowicz, *Ochrona stanu cywilnego*, [in:] J.S. Piątowski (ed.), *System prawa rodzinnego i opiekuńczego*, Warsaw 1985, p. 211.

As a rule, it continuous unchanged, encountering certain limitations only after the child reaches the age of 13, or when the child is completely incapacitated.

Upon reaching the age of 13, the child acquires limited legal capacity (Article 15 of the Civil Code) and may perform certain legal actions personally with the proviso that their validity requires consent of the parents or legal representatives (Articles 17 and 63 of the Civil Code), or in some cases, no consent from them (Articles 17, 20, 21, and 22 of the Civil Code). In the aforesaid cases, it pertains to property-related activities.

The powers acquired by the child upon reaching the age of 13 are very important under the provisions of the Code of Civil Procedure and the Code of Administrative Procedure. According to Article 65 § 2 of the Code of Civil Procedure, the child acquires the right to initiate proceedings in matters arising from legal actions, which may be carried out autonomously, as regulated by the ability of minors to appear before the administrative authorities⁶.

Regarding the exercise of authority over an incapacitated child, pursuant to Article 108 of the FGC, they are subject to such restrictions as are imposed on the guardian. We must therefore explain these restrictions to the extent relevant to this paper.

As in the case of parental authority, the FGC stipulates that the guardian is obliged to perform their duties as required for the welfare of the child remaining under the guardian's care and for the social interest⁷. However, apart from this general provision contained in the Code, there are certain limitations that differ the guardianship from parental authority.

According to Article 156 of the Family and Guardianship Code, the guardian should obtain the permission of the custody court in all major matters relating to the person or property of a minor. The interpretation of that article raises doubts as to how the phrase "major matters" shall be understood - whether it should have a subjective nature, depending on the guardian's judgement, or the objective one, taking into account the circumstances, generally considered as essential. The literature cites the most common cases i.e. the choice of school, or placement with a care and educational institution. Undoubtedly, the issue of the child's upbringing in a particular religion should also be included among those.

⁶ The Act of 14 June 1960 - Code of Administrative Procedure (Journal of Laws of 2000, No. 98, Item 1071, Article 30).

⁷ Act of 25 February 1964 - Family and Guardianship Code, Article 154.

In addition to the court's consent to making decision on major issues concerning the minor, the guardian is also required to listen to the child under the guardianship, where the child's mental and health development allows⁸. Once again, there is a reference to the degree of maturity of the child, here in the context of seeking the child's opinion on major issues, as indicated, also on religious beliefs. Here, however, the final decision is, in the face of potential conflicts between the guardian and the child, left to the will of the court.

In one of its judgements, the Supreme Court clarified the nature of the guardianship. According to the recommendations of the court, the guardian(s) shall be subject to a constant supervision of the custody court. Such supervision should be organized so as the custody court should receive regular and actual information on how the guardianship is exercised and the results thereof, and thus so as to ensure that the court supervision is real. The role of the court cannot therefore be limited to receiving the reports from the guardian(s) only. The court should also check the living circumstances of the child, the child's physical and spiritual development, or educational progress; where necessary, let the child to be examined by professionals (doctors, psychologists), contact other authorities (e.g. school), check the child's living conditions through the custodian etc. The idea is that supervision should be actual, and not formal. The custody court should also interview the child under custody, of course, at longer time intervals and in such a way as not to arouse mistrust towards the guardian. The guardians should also be monitored for any major decisions in matters concerning the person or property of a minor, made contrary to Article 156 of the FGC⁹.

According to the jurisprudence, spiritual education includes the inculcation of the principles morality and social interaction into the child, shaping righteous characteristics, development of conscientiousness, diligence and sense of duty, love of country, and the habit of respecting other people's social property as well as providing the child with education appropriate to the child's abilities. Undoubtedly, the education includes also the transmission of religious values relevant to the beliefs held.

⁸ *Ibid.*, Article 158.

⁹ Resolution of the Full Bench of the Supreme Court's Civil Chamber of 9 June 1976, III Civil Law Notebooks (next: CLN) 46/75, Item 184.

3. Upbringing and development of the child according to the parents' convictions

The provisions of the Constitution emphasize the primary role of parents in mutual relations with the child. Apart from the already mentioned Article 48, which entitles the parents to educate their children in conformity with their own convictions and in a way that respects the freedom of conscience and religion, other regulations are designed in the same spirit. Further articles clarify such upbringing. It should account for the freedom to choose the school where the child will attend as well as the possibility to transmit moral and religious values to the child¹⁰.

The Convention on the Rights of the Child provides different wording of the regulations. Here, parents are supposed or even obliged to assist the child in the enjoyment of applicable rights to religious freedom. The sphere of responsibility for the child's fate is addressed in Article 18, which provides that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern¹¹.

The emphasis on the aspect of the menial role of parents in the upbringing of the child can also be discerned in the Supreme Court's judgement cited hereinbefore, which states that in the light of the Family and Guardianship Code, the parental authority primarily represents a set parents' duties with respect to the child. Parental rights towards a child, however, are somewhat a secondary component of that power¹².

The entire process of raising children in accordance with the beliefs of parents and legal guardians is evident in the ability to decide about the moral and religious values which the child is to receive up to a certain moment. This is associated with the ability to decide whether the child is to attend classes in religion or not as well as closely correlated with the above-mentioned right to choose the type of school, secular or confessional. All the legal regulations are focused precisely on the aforementioned aspects.

¹⁰ The Constitution of the Republic of Poland of 2nd April 1997, Article 53, § 3, Article 70, § 3.

¹¹ The Convention on the Rights of the Child of 20 November 1989, Article 18, § 1.

¹² Resolution of the Full Bench of the Supreme Court's Civil Chamber of 9 June 1976, III CLN 46/75, Case Law of the Supreme Court Civil and Labour Chamber 1976, No 9, Item 184.

Historically speaking, it should be noted that the Constitution of 22nd 1952 stipulated that the Polish People's Republic ensured freedom of conscience and religion to its citizens. According to the Polish Episcopal Commission, this general rule does not point to any specific authorization for the family to educate their children in compliance with their convictions. Therefore, they continually advocated for the inclusion of the above guarantee into national legislation. Additionally, the Act 15 July 1961 on the development of education and upbringing contained the declarations on the secularity of schools understood as atheism of teaching and education in the spirit of the so-called scientific world view perceived by the legislator as the materialistic world view. The ideology was to take the place of religion. According to H. Misztal, the state wanted to replace the family by taking away the natural right of parents to educate their children in the spirit of their beliefs and outlook, and by entrusting the school not only with the educational function, but also by creating a range of costly auxiliary institutions¹³. The acts aimed at the total eradication of religion from schools and limitation of parish catechism classes, and thus eliminating the influence of the family and the Church on the young generation included: Ordinance of the Minister of Education of 19 August 1961 on the operation of catechism centres¹⁴ and the Instruction of the Minister of Education of 19 August 1961 on the mode for enactment of the Ordinance of the Minister of Education of 19 August 1961 on the operation of catechism centres¹⁵.

The first pieces of legislation in Poland which referred to the international standards in the matters under discussion comprised the Acts on the Guarantees of Freedom of Conscience and Religion and the Relationship between State and the Catholic Church in Poland. The preambles of both acts invoked the international agreements that have been ratified by Poland and the subject of their regulation were largely human rights including religious freedom.

The Act on the Guarantees of Freedom of Conscience and Religion recognized the citizen as the subject of the rights included therein, unlike the standards of international law, which apply to every human being. This seemingly purely editorial difference is, as we have already demonstrated in practice, of great importance. The Act assumes that foreigners shall be treated on equal basis with the Polish citizens with the regard to their rights¹⁶.

¹³ Ibid.

¹⁴ Journal of Laws of the Minister of Education of 1961, No. 10, Item 124.

¹⁵ Ibid., No. 14, Item 177.

¹⁶ Act of 17 May 1989 on the Guarantees of Freedom of Conscience and Religion

The guarantees of religious freedom were also the subject of regulations included in the Concordat signed between Poland with the Holy See in 1993. In the said agreement, the Contracting Parties declared respecting the institution of marriage and the family, which are the foundation of society. With regard to upbringing of children by parents, two principals have been adopted. Firstly, they recognising parental rights with regard to the religious education of their children; secondly, State guaranteed that public elementary and secondary schools, and also preschools, managed by civil administrative organisations or independent bodies, would arrange, in conformity with the desire of parents, the teaching of religion.

The problem of upbringing of children in accordance with the will of parents was touched upon by the Supreme Court in one of its judgements. The subject of the decision was the right of a divorced father, who was not deprived of parental rights, to decide on the education his child would receive. The judgement was issued in 1962, so one needs to take into account the existing historical context, when the Supreme Court declared the preferred educational content. Despite the completely different conditions existing in Poland at present, it is worth quoting the fundamental thesis of that judgement.

The first issue resolved by the Supreme Court was the problem of the divorced father's authority over his daughter, staying with her mother. The Supreme Court decided that since the applicant has not been deprived or limited in the exercise of parental authority over his daughter, he shall have the right, regardless of his previous improper exercise of parental rights, to influence the direction of raising the child and demand – given the parents' disagreement as to the direction of the education – to settle the issue by the Court¹⁷. Further reasoning of the cited judgement has been dedicated to the direction, which shall be given to the child's education. The courts, having to decide the issue of whether the child should be brought up in the clerical or secular spirit, should be – according to the guidance of the Supreme Court – take into account the will of this parents, who opts for secular upbringing of the child. As this direction of education, based on scientific principles, was deemed progressive and consistent with the fundamental socio-political assumptions of the Polish People's Republic, it was supposed to have precedence over religious education.

(Journal of Laws No. 29, Item 155, Article 7, § 1).

¹⁷ Judgement of the Supreme Court's Civil Chamber of 25 May 1962, 3 Civil and Family Chamber 821/61.

The Supreme Court believes that when issuing any decisions concerning the upbringing of the child, the courts should bear in mind that the fact that parents are entitled to parental authority is not in their interest but in the interest of children and, in any case, where the interests of the child so require, the courts should act *ex officio* and take only such decisions, as a result of which the child would be provided with appropriate physical and spiritual development and would be properly prepared to work for the benefit of society. If implementation of these decisions requires a certain behaviour of the parents, the court shall be obliged to issue a ruling also in this respect. Therefore, a court shall not make decisions on a matter concerning the child only in the light of the existing facts, where such facts justify that such a decision is undesirable from the point of view of the child's welfare, without any attempt to change this situation, insofar as it is possible and desirable.

In addition to the indications as to the preferred content to be inculcated in the child, this judgement maintains its topicality. This primarily concerns the issues relating to the parents' care physical and spiritual development of the child as well as applicability of the child's supreme interest clause.

Attendance to religious education classes was made conditional upon the discretion of the parents, or – when it comes to post-primary schools – the students themselves¹⁸. These instructions were provisional and were to remain in force until enactment of the new law on education¹⁹.

In contrast, the Constitutional Tribunal, in its judgement of 30 January 1991, found groundlessness of this appeal and presented the theses essential for the organization of education, at the request of parents. According to the Constitutional Tribunal, the elimination of religious education from schools greatly limited the constitutionally guaranteed freedom of conscience and religion of citizens, and made it difficult for churches and religious associations to fulfil their functions. These limitations were manifested, among others, by territorial and temporal separation of religious education from the school curriculum. This resulted, as noted by the Court, in so severe difficulties for youth in the access to religious education that in many cases, young people were forced to resign from religious instruction, against their own will and the will of their parents²⁰.

¹⁸ J. Krukowski, *Kościół i państwo. Podstawy relacji prawnych*, Lublin 1999, p. 236-238.

¹⁹ A. Mezglewski, *Usunięcie i przywrócenie nauczania religii do szkół*, [in:] W. Janiga, A. Mezglewski (eds.), *Katecheza dzisiaj. Problemy prawne i teologiczne*, Krosno-Sandomierz 2000, p. 104.

²⁰ The Judgement of the Constitutional Tribunal of 30 January 1991, K11/90

The aforesaid decision did not end the dispute over the teaching of religion in public schools. The Human Rights Defender of the next term of office appealed to the Constitutional Tribunal against the Regulation of the Minister of Education of 14 April 1992 on the conditions and manner of organizing religious instruction in public schools, claiming a multi-layered contradiction with the Constitution and the general legislation²¹. The challenged regulation was an executive order to the Act on the Education System of 7 September 1991 and repeated its provisions regarding the rules for organizing religious instruction in accordance with the will expressed by parents, or in the case of secondary schools, by young people themselves.

In reply to the appeal of the Constitutional Tribunal, the Human Rights Defender stated that secularism and neutrality of the state cannot mean a prohibition to teach religion in public schools, since teaching thereof, as specified in the Act on the education system, can take place only at the request of parents or, in certain cases, at the request of students²². Thus, the parents' right to decide on the religious education of their children has been confirmed.

4. Conflicts on the grounds of exercise of the right to religious freedom by a child

The foregoing considerations have shown that the Polish legal system grants rights both to children and their legal guardians. On the one hand, the legislator provides the parents and guardians with the ability to decide about the way of upbringing children. On the other hand, it proclaims the child's right to freedom of religion. Thus, when these two types of rights encounter on one plane, it may lead to a potential conflict of interest.

The solutions set forth in the Act on the education system and the Regulation on the organization of religious education in public kindergartens and schools, issued pursuant thereto have already been mentioned in this article. Once in the context of the scope of religious freedom of the child, then again when characterizing the powers conferred upon parents. Now, we will attempt to look at these

Case Law of the Constitutional Court (next: CLCC), Item 2, p. et seq. K11/90.

²¹ D. Dudek, *Równouprawnienie kościołów i związków wyznaniowych na tle konstytucyjnych zasad prawa wyznaniowego*, [in:] A. Mezglewski (ed.), *Prawo wyznaniowe w systemie prawa polskiego*, Lublin 2004, p. 213.

²² The Judgement of the Constitutional Tribunal of 20 April 1993, U12/92 CLCC of 1993, Part I, Item 9, p. 92 et seq.

regulations as a source of potential conflicts. As already outlined, the religious instruction in primary and secondary schools is organized at the request of parents; in junior secondary schools, either students up to 18 years of age themselves, or parents, can express the consent, while after completing 18 years of age, the interference of parents and legal guardians shall be excluded. It is this ability to express the will by the parents or by the children themselves that may be a cause of conflict. By allowing such wording, the legislator overlooked certain aspects. Firstly, the possibility to express will regarding the religious beliefs was made dependant on a certain occurrence i.e. graduation from junior secondary school. Let one assume a hypothetical situation, where twins born on the same day attend junior secondary school. One of them easily copes with the obligations imposed by the school curriculum and easily gets promoted to the next grade, while the other treats school as a necessary evil and reveals a rather dismissive attitude. As a result, the first one becomes a senior secondary school, while the other remains in a junior secondary school. According to the presented legal acts, their legal position with regard to the implementation of their right to religious freedom is different. While the first of the twins can decide about his/her religious education or lack thereof, the other still depends entirely on the will of the parents. It seems that the legislator should rather indicate the age limit, which allows to make the above-mentioned decision.

The second omission on the part of the legislator is the failure to indicate the procedure in the event that the opinions of the parents and the child on the issue under discussion are different. Since neither the party which should be given priority nor the one which should succumb to the other was indicated by the legislator, in the face of the presented solutions, it seems that the arguments in favour of the parents outweigh. This can be evidenced by the structure of the provisions contained in the Constitution of the Republic of Poland of 1997. They ensure respect for the parents' will to bring up their children in conformity with their convictions. The child's religious freedom is to be respected by them in the process of such upbringing according to the child's degree of maturity. In the first place, the Legislator lists the rights of parents, and only in the context of religious freedom, of the child²³. The provisions of the Family and Guardianship Code favour the parents, stating that the child under parental authority owes obedience to parents²⁴. However, it must be taken into account that the

²³ The Constitution of the Republic of Poland of 2nd April 1997, Article 48, § 1 and Article 53, § 3.

²⁴ The Act of 25 February 1964 – Family and Guardianship Code, Article 96, § 2.

exercise of parental authority must have regard to the best interests of the child. These interests should be the reference point in the entire process of education.

In connection with the cited regulations, one more issue should be given consideration. The Polish law allows the situation, where a person under eighteen years of age becomes mature. This happens in the case of a minor, who enters into marriage²⁵. The prescribed limit is 16 years (for women) if the circumstances indicate that the marriage will be in the best interests of the founded family²⁶. Such a person should be able – if attending school – to decide whether to take religion classes, without asking the parents for opinion, as entering into marriage means that such a person – according to the law – should be treated as an adult.

Another area is the issue of widely understood religious practices and all the matters associated therewith e.g. participation in various celebrations, wearing costumes provided for the particular denomination, the obligation to preserve the ritual posts, taking part in various retreats and other practices. The question that arises is obvious. If parents have the right to educate their children in conformity with their convictions, taking into account their freedom of conscience and religion and the degree of maturity, do they have the right to enforce the obligation to adapt to their will in the exercise of religious practices? The answer is not so obvious. On the one hand, if the parents are given the right to educate the child in accordance with their beliefs, they cannot be denied the ability to define the methods used in the process. However, sometimes these methods may prove burdensome for the child. One of the examples are Jehovah's Witnesses, whose doctrine does not allow blood transfusion for children. Here, however, the family court may intervene and order the execution of the referred treatments. The problem may also occur in the case of obligating the child to wear clothing assigned to the followers of a particular religion. Sometimes it can cause discrimination against children in the environment of their peers. In these and similar cases, interference of the court, which should have the deciding vote, cannot be ruled out.

In the process of education, parents may interfere with the religious freedom of the child by an order of specific behaviour, but also by forbidding certain activities. Undoubtedly, this may also provide the grounds for conflicts. As already stated in the first chapter,

²⁵ The Act of 23 April 1964 – Civil Code, Article 10, § 2.

²⁶ The Act of 25 February 1964 – Family and Guardianship Code, Article 10, § 1.

the religious freedom of the child is also expressed by the possibility of manifesting their views, whether individually or jointly with others. Of course, this is related to the affiliation of the child with an organization of a religious nature. The question is what is the point until which the parents' interference is allowed. For the obvious reasons, they cannot be deprived of this entitlement. However, the indication of the limit should be left to the court, which will rule in a particular case.

The child's religious freedom is also reflected in the access to information concerning the child's beliefs. Here, parents also can apply some kind of censorship, by limiting access, which can give rise to conflicts.

A very important issue is the choice of the school, where the child is to attend. While in the case of primary schools, there are no problems with parent-child relationships, they may emerge at a higher level of education. Although the law provides parents with the right to decide which school to choose, the decisions taken will not always be consistent with the interests of the child. There may be a case that a child with great sport talents wants to continue the education at specialized facilities that enable further development. Parents, however, may believe that the best solution would be to send the child to a religious school with a high level of education. What would be the solution in such a situation? Should the absolute right to decide be given to the parents or the child? It appears that the court intervention cannot be excluded.

The same kind of frictions can occur between the guardian and the child as between the parent and the child. However, as already indicated in the previous section, the legal situation of a legal guardian is slightly different than the situation of a natural parent. The institution of guardianship suffers from certain limitations in the educational process. These limitations are twofold. The first are connected with the need to listen to the minor, the other are determined by the will of the natural parents.

Regarding minors, these limitations stem from the already presented Article 158 of the FGC, according to which prior to making decision on major issues concerning the minor, the guardian should listen to the child under the guardianship, where the child's mental and health development allows, and take into account as far as possible the reasonable will of the child. Thus, compared to the parental authority, the child has been here additionally provided with the possibility to present his/her will before the guardian makes the final decision, even though it does not have to be taken into account. In the event

of a potential conflict, the child has a legally guaranteed opportunity to comment.

This regulation must be interpreted in the context of the provision which dictates that the guardian shall obtain the permission of the custody court in all major matters relating to the person or property of a minor. The conflict between the guardian and the child regarding the religious freedom, which – as already mentioned – has been included among these major issues, can be resolved by the court. It may also happen that the will expressed by parents influences the behaviour of the guardian and can lead to some confusion.

The Family and Guardianship Code provides that when the welfare of the child under the guardianship is not prejudiced, the person appointed as a guardian of a minor should be first and foremost a person designated by the father or mother, if not deprived of parental authority. Thus, the legislator indirectly indicated that the guardian appointed by the parents should take into account in the educational process their will, if clearly indicated by them. In connection therewith, the following situations may occur.

It may happen that a child was raised by parents in the spirit of some religious values and fully accept their contents. There is an accident and both are injured, however, before their death they express a will to entrust the exercise of care to some person. They may not know, however, that the guardian has become affiliated with e.g. a sect and remains fully under the influence of their teachings. The guardian may attempt to entice the child entrusted to him/her to that group, against the child's will. There may arise a conflict, which can have its epilogue in court.

A different situation may arise when the children did not accept the education received from parents and guardian seeks at all costs to instil the values that were professed by the natural parents. This can also lead to misunderstandings requiring court intervention.

Of course, the above-mentioned cases are justified if the parents were not deprived of the exercise of parental authority. Otherwise, the guardian should be left more freedom to decide. However, significant are also the child's degree of maturity and welfare, which should constitute the decisive indications for judgements handed down by the court.

In addition to the presented conflicts, which can occur on the grounds of parental authority and care, the misunderstandings that may arise between the parents themselves must be mentioned too. They may in fact be of essence to the child and interfere with the child's right to freedom of religion.

Parents can argue about what kind of education their children should receive. This may be the case maybe both during marriage, and after adjudicated divorce or separation. Parents may profess different system of values and wish to pass it on to their child. The final decision, as laid down in the FGC, should be left to the court²⁷.

It seems that the conflicts presented above may happen in reality and will require the use of a certain solution. It must be noted, however, that the court should participate in the process only in special cases. Parents, as a rule, work in a way that is mindful of the highest interests of the child and direct their activities towards the child so as to ensure best protection of such interests.

Therefore, the interference of the court in the educational process should be used only as a last resort, when there are clear risks to the child. Of course, the court interference should be understood as issuing decisions contrary to the will of the parents. A child cannot be deprived of the right to bring lawsuits and participate in court proceedings in accordance with the remedies prescribed by the law.

Conclusion

In genere, it should be noted that in the light of Polish and international law, certain decision-making rights shall be granted to the child in the process of upbringing and development. Although, until the entry into force of the FGC, all the documents proclaim the said lights for the parents, the later legislation begins to see, even on the national level, the subjectivity of the child in this respect. On the grounds of the Polish law, these include first of all the Constitution of the Republic of Poland of 1997, which instructs to take into account the freedom of thought, conscience and religion of the child in the process of bringing as well as the child's convictions, in a manner appropriate to the degree of maturity of the child. The subjectivity of the child to express his or her will has been recognized in the Act on the education system and the Regulation on the organization of religious education in public kindergartens and schools, issued pursuant thereto. Both of these acts allow the child attending the junior secondary school to decide, whether to attend religion classes or not. Comparing the regulations established by the Polish legislator, it should be noted that they were shaped in the proper way. Firstly, they proclaim the right of parents and legal guardians to educate their children in conformity with their

²⁷ The Act of 25 February 1964 – Family and Guardianship Code, Article 97, § 2.

convictions. Secondly, the right to religious freedom is granted to the child. Thirdly, the law provides for the concept of a degree of maturity of the child, on which enjoyment of these rights by children depends, and given its underspecified nature, the possibility for the court interference emerges. Therefore, the parents and the child can exercise their rights as long as they do not interfere with each other clearly. Upon occurrence of a conflict in the parent-child relationship, which cannot be resolved through normal negotiations, the space for the court activity appears.

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Abstract

The freedom of conscience and religion of the child is proclaimed in both the Constitution of the Republic of Poland and in the Convention on the Rights of the Child. In both pieces of legislation, the said freedom stems from the adoption of human dignity as the basis for these rights; however, attention must be paid to the different approaches presented and especially the consequences arising thereunder. The Polish Constitution provides the parents with the right to educate their child in accordance with their own convictions. However, the FGC orders to respect the child's right to religious freedom and the power of parents to exercise that right in a manner consistent with the evolving capacities of the child. Undoubtedly, the conflict of interests of both parties is fairly visible here.

One should also pay attention to the following issues: taking into account the principle of the child welfare, child obedience towards parents and the guardian's care for the spiritual development of the child. These issues require more extensive commentary including e.g. the law on the guarantees of freedom of conscience and religion, "Polish Concordat", the so called individual religious acts, case law of the ECHR and the ECtHR and the teaching of the Catholic Church.

Keywords: rights of the child, freedom of conscience and religion, parental rights.

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**Wolność sumienia i religii dziecka a korzystanie z praw rodzicielskich.
Rozważania na podstawie prawa religijnego, rodzinnego
i międzynarodowego**

Streszczenie

Wolność sumienia i religii dziecka jest proklamowana zarówno w Konstytucji RP, jak i w Konwencji o prawach dziecka. W obu aktach prawnych wspomniana wolność wynika z przyjęcia godności ludzkiej jako podstawy tych praw. Należy jednak zwrócić uwagę na możliwe różne ich interpretacje, a zwłaszcza na konsekwencje z nich wynikające. Konstytucja RP zapewnia rodzicom prawo do wychowywania dziecka zgodnie z własnymi przekonaniem. Kodeks rodzinny i opiekuńczy nakazuje szanować prawo dziecka do wolności religijnej i korzystać z tego prawa w sposób adekwatny do poziomu rozwoju dziecka. Niewątpliwie konflikt interesów obu stron jest tutaj dość widoczny.

Należy również zwrócić uwagę na następujące kwestie: uwzględnienie etapu rozwoju dziecka, posłuszeństwo dziecka wobec rodziców i troska opiekuna o rozwój duchowy dziecka. Te problemy wymagają szerszego odniesienia, np. do ustawy o gwarancjach wolności sumienia i wyznania, „polski konkordat”, tzw. indywidualnych aktów religijnych, orzecznictwa europejskiego trybunału praw człowieka oraz nauczania Kościoła katolickiego.

Słowa kluczowe: prawa dziecka, wolność sumienia i wyznania, prawa rodzicielskie.