

THE RIGHT TO EDUCATION IN TURKEY AND POLAND: COMMENTS ON THE CONSTITUTION AND THE JURISPRUDENCE OF THE ECHR

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Abstract

The Constitution, established on April 20, 1924, laid the grounds for this in Art. 2: the official language of the state is Turkish, and anyone who cannot use it in spoken or written form cannot be elected as representative of the people. Higher secular education was concentrated around the university, functioning as five faculties: medical, legal, humanities, natural science, and theology. Teaching religious culture and moral education is included in the obligatory curriculum for primary and secondary schools. Attending other religion classes is voluntary, and in the case of minors, it is a decision of their legal guardians. The Constitution established April 2, 1997 in Chapter II Economic, Social and Cultural Freedoms and Rights in Art. 70 guarantees the right to education in Poland. In the case of the right to education, such a connection is justified by the importance of this right for the development of the individual and the society. It has a guarantee character, providing the actual implementation of this right, even against the will of the person entitled, and also depends, at least in terms of primary education, on international standards. In this study it is tried to make a comparison between right to education in Turkey and Poland.

Keywords: Education Right, Constitution, Jurisprudence.

JEL Codes: I21, I29, K3.

TÜRKİYE VE POLONYA'DA EĞİTİM HAKKI: AİHM ANAYASASI VE HUKUKU HAKKINDA YORUMLAR

Özet

20 Nisan 1924'te kurulan Anayasa, Maddesinde bunun temellerini attı. 2: Devletin resmi dili Türkçe olup, bunu sözlü ve yazılı olarak kullanamayanlar milletvekili seçilemez. Yüksek laik eğitim üniversite etrafında yoğunlaştı ve beş fakülte olarak işlev gördü: tıp, hukuk, beşeri bilimler, doğa bilimleri ve teoloji. Din kültürü ve ahlak bilgisi öğretimi, ilk ve orta dereceli okullarda zorunlu müfredatta yer almaktadır. Diğer din derslerine katılmak isteğe bağlıdır ve reşit olmayanlar söz konusu olduğunda yasal vasilerinin kararıdır. 2 Nisan 1997 tarihli Anayasa'nın II. Bölümü Ekonomik, Sosyal ve Kültürel Özgürlükler ve Sanatta Haklar. 70 Polonya'da eğitim hakkını garanti eder. Eğitim hakkı söz konusu olduğunda, böyle bir bağlantı, bu hakkın bireyin ve toplumun gelişimi için önemi ile gerekçelendirilir. Hak sahibi kişinin iradesi dışında dahi olsa bu hakkın fiili olarak uygulanmasını sağlayan garanti niteliğindedir ve ayrıca en azından ilköğretim açısından uluslararası standartlara bağlıdır. Bu çalışmada Türkiye ve Polonya'daki eğitim hakkı arasında bir karşılaştırma yapılmaya çalışılmıştır.

Anahtar Kelimeler: Eğitim Hakkı, Anayasa, İçtihat.

JEL Kodları: I21, I29, K3.

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1. INTRODUCTION

The parliament proclaimed the Republic of Turkey in 1923. Despite adopting a parliamentary system, the republic continued the dictatorship of President Mustaf Kemal Paşa (Atatürk) and the People's Republican Party he established in 1923. The new Turkey was supposed to become the antithesis of everything that was Ottoman - the place of the multiethnic, multilingual and multireligious society was about to be replaced by a uniform and secularized Turkish nation (Szkudlarek, 2014, p. 53). The Constitution, established on April 20, 1924, laid the grounds for this in Art. 2: the official language of the state is Turkish, and anyone who cannot use it in spoken or written form cannot be elected as representative of the people. The Constitution also guaranteed that no one could be persecuted based on religious affiliation, rite, views or being a member in a religious fraternity as long as it was not a threat to public order, the moral condition of society and did not contradict its values (Szkudlarek, 2019, p. 112). The regulation concerning belonging to religious brotherhoods was changed in 1937 together with their illegalization, then liquidation, implementing new philosophical assumptions based on the so-called "Six arrows of kemalism" (Altı Ok), which influenced Kemal Pasha in his policy, which was then raised to the rank of constitutional norms. They were: republicanism (Cumhuriyetçilik), equality, the rule of the people (Halkçılık), secularism (Laiklik), reformism (Devrimcilik), nationalism (Ulusçuluk), etatism (Chmielowska ve Sobczak, 2016, p. 213).

The new regulations of social order and life, based on Kemalism, became the beginning of reforms concerning practically every area of social life, including education. The reforms were targeted at modernizing and securing the state according to the Western models. New legal codes were introduced: civil (including abolishing polygamy), criminal and commercial ones, based on Western countries. In 1928, the Latin alphabet was introduced instead of Arabic. The breakthrough was considered granting women the voting rights to in 1934 (Poznańska, 1977, p. 13).

Higher secular education was concentrated around the university, functioning as five faculties (fakülte): medical, legal, humanities, natural science, and theology. The Faculty of Medicine (and the dental and pharmaceutical school connected with it) was the oldest fast developing faculty at an independent medical school in Haidar Pasha, on the Asian shore of the Bosphorus. In turn, future administrators were educated at the Faculty of Law, and then, after graduating, they completed a 3-year internship before getting accepted to the state service. The remaining faculties - humanities and natural sciences, educated future teachers of public schools. The level of teachers differed: apart from European-class scientists, the teaching staff were self-taught, unfamiliar with European research methods in the area of their expertise (Kowalski, 1925, p. 50).

The personnel of the University included a group of professors who performed functions within the bodies of: respectively provost, senate, deans and delegates, whom they appointed independently. The university was of great importance in Turkey, and the professors were considered a social authority, also performing public functions in representative bodies. The group of students of the University included both women and men, although classes until the academic year 1924 at the faculty of humanities were conducted for them separately. Turkey pretty quickly undertook reforms targeted at the complete elimination of the problem of discrimination against women and extending the catalog of their rights. The right to the equal access to education for all was guaranteed in 1925 (Büyükbayrak ve Dahl, 2015, p. 116).

Apart from universities, there were other special schools of higher education (dariil-elhan), e.g. the music school in Constantinople, teaching Eastern and European music, and medrese-i-hattatin - a school of calligraphers, applied arts and miniature painting. On the other hand, secondary education in larger cities consisted of secondary schools (formerly sultanije, today lise), including 12 classes (5 preparatory and 7 higher). The curriculum, based on French models, provided for learning foreign languages to choose from: French or German, whereas Arabic and Persian were optional. What is more, there were also vocational schools of craftsmanship (sanai mektebi), agriculture (ziraat mektebi) and other specialized schools: silk industry, trade and mining.

The staff was taught by male (dar-ul-muallimin) and female (dar-ul-muallimat) teacher training seminars. The female seminars educated teachers of elementary education, rather underdeveloped in the provinces, before the reform dominated by breeders who learnt mainly prayers and verses from the Koran, instead of basic language skills, such as reading the press. That is why, the basic premise of the reform was fighting against illiteracy resulting from the teaching of hodjas. Cultural and educational organizations, such as the "Turkish Fireplace" (Türk Odzagy), founded by the university youth of Constantinople, also helped to propagate education in the provinces. Türk odzagy was about to focus on effective education at least in the elementary scope of children and adults living in the most backward villages, focusing on the fight against illiteracy, organizing courses for rural children in terms of reading, writing and counting, Turkish history, geography, and state system studies and civic duties (Kowalski, 1925, p. 52).

Turkish nationalism in public life for many years has been effectively supported by the propaganda of speaking, writing and reading exclusively in Turkish (Szymański, 2010, p. 37). Nationalists were hostile against the ethnic minorities of the Muslim faith, mainly Lazas, Circassians, Azerbaijanis and Arabs (Szkudlarek, 2019, p. 115). Dissatisfaction with the radical actions of the ruling Democratic Party (Demokratik Parti) contributed to the political crisis in the 1950s. The coup d'état conducted in 1960 by anti-government forces and the repeal of the Constitution of 1924 aimed at strengthening the secular and national character of the state under the slogan of reinstating the principles of Kemalism. The status quo was guaranteed by the army that served as the guardian of Turkish secularism whenever there was a risk of its disruption by political opponents.

Accepting new constitution through referendum on July 9, 1961 made it possible to reinforce the ideology of Kemalism² (Rabczuk, 2017). The constitution maintained the republican form of the state, guaranteeing the rule of law and the supremacy of the constitution in the hierarchy of the sources of law by appointing a Constitutional Court to supervise the parliament (Adamczyk, 2011, s. 48). Moreover, it should be noted that the rights and freedoms of the individual, considered by the constitution as a matter of such importance, establishing the foundation of the Turkish state, that these regulations preceded the issues of the system of state apparatus in its systematics. The constitution from 1961 guaranteed a universal catalog of civil rights and freedoms that every individual is entitled to simply by virtue of being human. The rights and freedoms could not be taken away from him and he could not relinquish them. The limitation of rights and freedoms could take place based on a statute, adopted according to the letter and the spirit of the constitution. It was guaranteed that the bill may not infringe the core of a particular right or freedom, even when it comes to such values as public interest, public morality, public order, social justice and national security.

²Turkey is the first and only secular state in the Islamic world. Taking inspiration from ideology of the Enlightenment and the French Revolution, both France and Turkey introduced secularism into their own legislation and constitution.

Considering the problems of applying the already repealed Constitution of 1924, the constitution-maker expected that the definition of the limits of rights and freedoms cannot be left to the legislator, but the constitution itself is to designate the limits for the legislative activity of the parliament that restricts civil rights and freedoms. Therefore, the new constitution announced a strong foundation for a democratic state of law. The expression of the reforms introduced earlier was Art. 50 of the Constitution, guaranteeing common access to primary education for both women and men. Moreover, the constitution guaranteed access to additional public funds for further education. Education was consequently an important instrument in the process of nation-building (Şimşek et al., 2012, p. 2810).

The legitimation of the Kemalist ideology, that imposes a certain value, knowledge, faith, attitude and behavior, was possible due to the teaching provided at every stage of education (Hirsch, 1950, s. 312). Creating and spreading a modern education system in Turkey was both one of the main goals of the Kemalist reforms and, somehow, a safeguard for implementing other reforms (Heper, 2015). Although the Constitution of 1961 contained democratic solutions in terms of fundamental rights and civil liberties and a system of guaranteeing their protection, the circumstances of its approval in a referendum after a bloody military coup had an influence on its low acceptance in the society (ilkadimdergisi.net, 2011). The practice of its application in social life was also not satisfactory, considering how diverse this society was in terms of religion and culture. In the practice of applying the Basic Law, the nationalist ambitions of the state, supported by the authorities, excluded respecting the rights of minorities. It was generally accepted that the defense of the state order was a responsibility of the armed forces, which kept the opponents of nationalization and secularization in line. However, the opposition did not give up, accusing the government of breaking the systemic continuity of the state by the coup in 1960, the influence of the military formation on the process of forming the constitutional foundations of the Second Republic, the instability of the course of political processes, and the defectiveness of some solutions introduced in the Basic Law. They believed, the Constitution of 1961 was not permanent and coherent foundations of the system (ilkadimdergisi.net, 2011). The multicultural demographic structure, on the one hand, and, on the other, the repressive and biased policy towards religious minorities clashed with different intensity. There were even few attempts to reunite Islam and Kemalist ideology after another coup in 1980, the normative expression that was the introduction to Art. 24 of the new Constitution of the Republic of Turkey provides that education in terms of religion and ethics is conducted under the supervision and control of the state. Teaching religious culture and moral education is included in the obligatory curriculum for primary and secondary schools. Attending other religion classes is voluntary, and in the case of minors, it is a decision of their legal guardians.

2. THE RIGHT TO EDUCATION IN THE CONSTITUTION OF THE REPUBLIC OF POLAND

The Constitution established April 2, 1997 in Chapter II Economic, Social and Cultural Freedoms and Rights in Art. 70 guarantees the right to education. This right should be considered as "a subjective right of a positive nature - a right consisting in the opportunity to request a benefit from the state, i.e. free access to education" (subject to sentence 2 (2) of Art. 70). It could also be argued that until the age of 18, the right to education, pursuant to Art. 70 paragraph. 1 seems to be a typical positive social law, and from the moment of "freeing" this law from the obligation to learn (at school) we can talk about the freedom of education (freedom law) (Zieba-Zalucka, 2009, p. 390). It means a positive obligation of the state in terms of education (providing universal and equal access to education), as well as creating appropriate support systems for students (section 4, Art. 70), which undoubtedly

gives the right to education a social dimension. In Polish law, the right to education is largely interpreted and also includes the right to education at the level of higher education. Thus, this should explain the reference to par. 5 Art. 70 to the autonomy of universities, although *prima facie*, a more suitable place to establish this principle would be Art. 73 of the Constitution concerning the freedom of research and teaching.

The right to education can be perceived not only as an individual's right, but also a right treated in a wider, social, long-term context. According to prof. L. Garlicki, the special importance of the right to education for the development of both the individual and society, its progress in civilization, makes the constitutional regulation of the right to education distinguished by its breadth and rich normative content comparing to other constitutional provisions concerning social rights (Zukowska ve Zukowski, 2014, p. 637). Article 70 of the Constitution concerns not only the subject's right to education, but also it also guarantees exercising this right and the obligation to study until the age of 18. The right to education, strictly understood, is the right to learn (receive education) and to expect the results of this right – being educated, which results from connecting the right to education in the first sense with the system of guarantees for the implementation of this right, some of them included in separate subjective rights (Garlicki, 2003, p. 1). Broadly included in Art. 70 the right to education also concerns receiving education at the level of higher education. Thus, this should explain the reference to par. 5 Art. 70 to the autonomy of universities, although *prima facie*, a more appropriate place to formulate this rule would be Art. 73 of the Constitution referring to the freedom of research and teaching. The obligation to study and the obligation to attend school are closely connected, it could be said - inextricably linked with the right to education (Zieba-Zalucka, 2009, p. 390). It means that the exercise of granting the right or refraining from it is left to the discretion of the individual (right holder). In the case of the right to education, such a connection is justified by the importance of this right for the development of the individual and the society. It has a guarantee character, providing the actual implementation of this right, even against the will of the person entitled, and also depends, at least in terms of primary education, on international standards.

3. THE RIGHT TO EDUCATION IN THE CONSTITUTION OF THE REPUBLIC OF TURKEY AND THE JURISPRUDENCE OF THE ECTHR

Generally specified in the Constitution of the Turkish Republic of 1982, the right to education is structured in two articles. The first of them, included in Chapter IX. Freedom of education and art. 27 states the right of everyone to learn and teach freely, to express and publicize scientific achievements and the arts, and to conduct research in those fields. The distribution right may not be used to amend the first, second and third articles of the Constitution. The regulations of this article do not preclude the statutory regulation of the import and distribution of foreign publications within the state (RG, 09.11.1982, Issue 17863 (Mükerrer)). The second of the provisions - Art. 42 included in Chapter II. The right and obligation to educate, states that no one may be deprived of the right to education and training. The range of the right to education is defined and regulated by law. Education and teaching are subject to the principles and reforms of Atatürk, the achievements of modern science and modern teaching methods, under the supervision of the state. Educational facilities whose activity is inconsistent with the above provisions are not allowed. Freedom of education and teaching does not absolve from the obligation to follow the Constitution. Initial education is compulsory for all citizens of both genders and is free in public schools. The rules connected with operating non-public primary and secondary schools are established in the Act, ensuring that they maintain the standards set for public schools. The state ensures help to gifted but deprived students in the form of scholarships and other resources, in order

to enable them to continue their education. The state provides special education to those who require it to become full-fledged members of society. Education and teaching establishments may only conduct activities concerning education and teaching as well as studies and research. Those activities must not be impeded in any way. Turkish citizens may only be taught Turkish as their native tongue in education and training institutions. The teaching of foreign languages in educational and teaching institutions and education in schools where the language of instruction is a foreign language is conducted according to the provisions of the Act. The regulations of international agreements are respected.

When it comes to the provision of Art. 27 of the Constitution, it should be highlighted that it is consistent with Protocol 1 Art. 2 of the ECHR, which, whereas guaranteeing the right to education, stipulates that no one may be deprived of this right. The state, in conducting its functions in terms of education and teaching, respects the parents' right to ensure this upbringing and teaching according to their own religious and philosophical convictions (second sentence of Article 2).

The right to education is especially important in the context of the right to non-discrimination, which was resolved in the judgment of the ECtHR of 30 January 2018, issued after considering the complaint of Enver Şahin against Turkey (ECHR, 30.01.2018, 23065/12). The complainant, a disabled student, alleged a violation of the right to education and discrimination by the University authorities, which did not adapt the academic building to his needs and caused him to drop out of studies. While still being a student, the applicant had a serious accident which left his left arm paralyzed, which prevented him from resuming his interrupted studies before undergoing fully recovery. The university building was not previously adapted to the needs of people with disabilities and did not have any facilities for physically disabled persons, which made the applicant unable to move around the building. Eager to continue his studies, he wrote to the rector of the University with a request to adapt the classrooms to his needs.

This request, however, turned out to be ineffective, because the rector responded that there was no possibility of introducing facilities for people with disabilities for financial reasons in the near future (www.hfhr.pl, 2018). The Court, examining the Sahina case, interpreted Art. 2 of Protocol No. 1 of the Convention (right to education) in conjunction with its Art. 8 (the right to respect for his private life), as well as Art. 14 of the Convention on the prohibition of discrimination, i.e. different treatment, without rational justification of entities in similar situations. The difference in treatment is, in the Court's view, unreasonable where it fails to pursue a "legitimate aim" or there is no "reasonable and proportional link between the means employed and the aim pursued". A state - party to the Convention may, consequently, in connection with the content of Art. 14 treat a particular group differently, but only in order to correct and not to aggravate the "actual inequalities" between them. According to the Court, "in certain circumstances, it is the lack of difference in treatment to compensate for inequalities, without objective and reasonable justification, that may constitute a violation of this article". In this case, State-a party to the Convention enjoys a particular margin of recognition in deciding whether and to what extent differences in otherwise analogous positions justify different treatment and, in cases where public policy measures are used in economic or social matters, their freedom in this respect is broad (www.hfhr.pl, 2018).

Consequently, the Tribunal emphasized the importance of Art. 14 of the Convention on universality and non-discrimination in the exercising the right to education. A suitable instrument for applying the provisions of Art. 14, and therefore also the measure considered to be the most appropriate to guarantee non-discrimination is inclusive education, allowing

for the promotion of equal opportunities for each person, especially for those with disabilities. In this case, the Court examined the diligence with which the university authorities, and then the Turkish judicial authorities, reacted to the situation of a student with disabilities. It ruled that both entities indicated the lack of funds that could be immediately allocated to the adaptation of the building to the needs of disabled people. The Court stated that, in order to ensure that people with disabilities have acceptable access to education, the national authorities have a margin of recognition and are in a better position than the Court to evaluate that margin in relation to the financial resources available. It meant that the Court could not find that the issue of the availability of university premises for the applicant could be put on hold until the necessary funds were obtained to perform all the adjustments required by law, which meant that persons with disabilities were entitled to expect a State -party to the Convention to provide them with the possibility to exercise all human rights and fundamental freedoms on an equal basis with others (Article 2 of the Convention). Such improvements are supposed to correct the actual inequalities and disability discrimination "covering all forms of discrimination, including denial of reasonable accommodation" (www.hfhr.pl, 2018). The university's suggestion, consisting in assigning the complainant a person to help him move around the university building, was not considered by the Court due to the abstract nature of this form of aid. Taking into consideration that the applicant did not wish to be helped by an assistant, he reassured his conviction that human dignity and freedom, including the freedom to make his own choices, establish the foundations of the Convention. That is why, the possibility of people with disabilities to lead an autonomous life with full respect for their dignity and confidence has a fundamental importance and is one of the issues at the essence of the Convention on the Rights of Persons with Disabilities.

The Court stated that the failure to adjust the university building to the needs of disabled people constitutes a violation of the right to education and discrimination of those people. Thus, there was a violation of Art. 14 in connection with Art. 2 of Protocol No. 1 to the Convention.

Another case of ECtHR judgment on the violation of the right to education, issued in the matter of Bekir Güven Altınay's complaint against Turkey, concerned a change to the rules for admission to university studies introduced without transitional provisions (ECHR, 09.07.2013, 37222/4). In the statement of reasons for the judgment, the Court stated that the right to education guaranteed in the first sentence of Article 2 of Protocol No. 1 is not an absolute right and may be limited by a State-a party to the Convention. In the opinion of the Court, the rules governing educational institutions may be different in time depending, inter alia, on the needs and resources of society and the individualities of education at different levels. As a result, the national authorities enjoy a certain discretion in this area. In regulating access to universities or colleges, Member Countries have a considerable margin of maneuver when it comes to the qualifications required to select the best candidates able to pursue higher education. However, the Court believed that the selection system could not negate the very core of the right to education.

According to the literal phrasing of sentence 2 of Art. 2 of Protocol No. 1, in fulfilling its duties in terms of education and upbringing, the State respects the right of parents to raise their children according to their own religious and philosophical convictions. It should also be highlighted that the member states of the Council of Europe have a public education system, so their duty is not to re-shape it, but to provide access to public institutions (Nowicki, 2017). The understanding, range and essence of this right were best described in the justification of the case concerning the problem of using own language at school by French-speaking residents of the Flemish part of Belgium. The Court then ruled, inter alia, that "The phrasing

of the right to education in a negative form means that the States Parties did not recognize this right in such a form that would require them to create, at their own expense, or subsidize special-type education or at a certain level. What needs to be stressed is that it is only a question of accepting as a guarantee principle for everyone who is under their jurisdiction, the right to access educational institutions existing at a particular time” (Nowicki, 2002).

The problem of teaching religion in multicultural Turkey is quite complex (Falski, 2014, s. 158). The Court resolved cases that are directly connected with the availability of religious education. One such case - *Temel v. Turkey* - concerned the right to education with regard to national, ethnic or linguistic minorities, and focused mainly on the right of parents to educate children in according to their religious and philosophical beliefs (Nowicki, 2010, p. 275). Comparable grounds had a case brought before the ECtHR by the applicants who chose to remain anonymous *C.J., J.J., E.J. v Poland*³. The Tribunal underlined that teaching religion at school is not inconsistent with the ECHR, but does not imply an obligation for children to take part in these lessons, if parents do not want it. Studying religion should be a choice, not a chore. No one should be obliged to practice religion or to be exposed to any form of religious indoctrination (Nowicki, 2017, s. 886). The judgment of the ECtHR in the case of *M. Grzelak v. Poland*, in which the Court found a violation of Article 14 (prohibition of discrimination) in conjunction with Art. 9 (freedom of thought, conscience and religion) of the Convention. The applicant complained that he was able to attend ethics lessons (instead of religion), which was guaranteed by the applicable legal provisions. The second aspect concerned the form of the school certificate in which the religion / ethics column was crossed out, which could mean that he did not attend religion lessons or ethics lessons.

M. Grzelak, due to his "irreligious" views, was bullied at school, which forced him to change the facility several times. The ECtHR did not challenge the regulations in force in Poland regarding the teaching of religion or ethics. It stated that the system of teaching religion and ethics provided in Polish regulations compared to the regulations of other countries, falls within the scope of the freedom to plan and determine curricula granted to other States. However, this statement does not concern the issue of putting a dash in the religion / ethics column on the school report and of course not organizing ethics lessons for waiting students and their parents. The Tribunal emphasized the essential importance of the practical implementation of the principle of freedom of thought, conscience and religion preserved in Article 9 of the Convention⁴. "Freedom of belief, conscience and religion, the Court states, is one of the foundations of a" democratic society "within the meaning of the Convention. It is in the "religious dimension: one of the most important elements that create the identity of believers and their concept of life, but also a value for atheists, agnostics, skeptics and laymen." Pluralism is the integral part of the democratic model of society established over the centuries. This freedom includes, among others the right to have religious beliefs or not, and to profess or not profess religion. Referring to this general thesis concerning the freedom of conscience and religion, the ECtHR highlights that a natural consequence of freedom understood in this way is the freedom not to disclose one's religious beliefs, and therefore the imposition by the state of a direct or indirect obligation to disclose the fact of not professing religion is a violation of the law. It is even more important as it happens in the context of providing educational services (Nowicki, 2017, p. 725).

The matter of allowing a student to drop out of class (right to education) for ideological reasons became an important element in the *Hasan and Eylem Zengin v. Turkey*

³ Complaint No. 23380/94.

⁴ ECtHR judgment of 15 June 2010 in the case of *Grzelak v. Poland*, application no. 7710/02.

case⁵. The father and daughter, followers of Islam in the Alawist branch, filed a complaint in which they accused the Turkish state that the compulsory lessons in the subject of "religious culture and ethics" were carried out from a Sunni perspective. According to the complainants, apart from learning about numerous religions, the lesson was mainly devoted to Sunni Islam, which was associated with teaching the principles, rites and prayers of this group. The problem was that the followers of Christianity and the Mosaic religion had the possibility of receiving exemption from teaching this subject, while the followers of Islam, regardless of the branch of this religion they belonged to, were unable to make such choice (Szczepaniak, 2015, p. 70). The applicants were concerned about the fact that such a possibility was only available to some, which resulted in unequal treatment. The Court, criticizing this matter, stated that if the subject in question was a course concerning different religions, it should not be obligatory only for Muslims, and if its main purpose was to teach Islam, then it is supposed to be optional.

The importance of providing the right (access) to education could be indicated from the reasoning of the judgment of the ECtHR in the Grand Chamber in the case of *Leyla Sahin v. Turkey*. The Tribunal ruled that in a democratic society the right to education, necessary for obeying the human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Art. 2 of Protocol 1 would be incompatible with its goals. Therefore, the Court allowed for a deviation from the classical method of interpreting the Convention in favor of an interpretation constant with the rule of effectiveness, finding that "it is vital that the Convention is interpreted and applied in a way that makes its rights real and effective, and not theoretical and illusory (practical and effective, not theoretical and illusory)" (Morawska, 2019, p. 95). Hence, it gave the right to education a special rank in implementing human rights in a democratic society. Providing access to already functioning educational facilities is part of the law in this regulation. As underlined by the Court, such an interpretation does not enforce new obligations on the states - parties to the Convention, but results from the interpretation of the text of the provision considering its context, purpose and object of the Convention. It does not create an obligation to states to create new academic institutions, but to merely provide access to them⁶.

4. DISCUSSION

The judgments issued by the ECtHR as a result of complaints by Turkish citizens were referred to by attorney-at-law (Elkatmış, 2011). Ibrahim Elkatmış in an interview on the Basic Law of Turkey. He noted that the right to education belongs to the powers of states - members of the Convention in the scope of regulating the right to education. States respect the statement of the ECtHR that this regulation should not undermine the essence of the right to education and should not conflict with the rights enshrined in the Convention and Protocols. It is the duty of the state to ensure equal use of the existing educational opportunities in such a way as to unify the principles of education, taking into account the situation of ethnic minorities. The curriculum should meet the requirements of objectivity, criticism and pluralism. The curriculum should not be implemented to shape specific behavior, but primarily to provide objective, scientific information. I. Elkatmış based his thesis on the principles of the Constitution of 1982, which differed from the constitution of Western democracies mainly in the fact that it placed society before the individual and the state before society, and it also contained the concept of a holy state. What is sacred in Western democracies is not the state, but human rights and freedoms (Elkatmış, 2011). Given the

⁵ ECtHR judgment of 9 January 2008, *Hasan and Eylem Zengin v. Turkey*.

⁶ Grand Chamber judgment of 10 November 2005 in the case of *Leyla Sahin v. Turkey*.

article on the right and obligation to education in the 1982 Constitution, rights and freedoms are often specifically enshrined in the constitutions of countries where human rights cannot become the rule.

The Constitution of 1982 was established in line with the criticism of the Constitution of 1961, in which rights and freedoms were guaranteed so effectively that they weakened the possibility of interference of the state authorities. I. Elkatmış, quoted the words of the prime minister of the provisional regime, Nihat Erim, on March 12, 1971, who described the Constitution of 1961 as "a luxury for Turkish society." In turn, the 1982 Constitution accepted a less participatory model of democracy, giving priority not to the individual but to the state. It happened because of the nature of the adopted legal norms, which were based on the casuistic (imperative, detailed) method, which made this constitution more rigorous in its practical application. It was particularly visible in the area of executive power, the role of which in the system of state organs was important.

The right to education, ensured in Art. 42 of the Constitution is addressed to everyone and means that no one can be deprived of the components of this right: learning, the possibility of training and self-improvement. The range of the right to education is defined in detail in laws and regulations, which supplement the provisions of the constitution in this respect. Primary education is obligatory for all citizens, men and women, and it is free in public schools. Education and training take place under the supervision of the state, together with the principles and reforms of Atatürk, the rules of modern science and education. Education and training institutions that do not follow these principles cannot be opened. The freedom of education and training does not eliminate the debt of loyalty towards the Constitution. Principles of non-public primary and secondary schools are controlled by law according to the level anticipated to be achieved in public schools. No one can be deprived of the right to higher education for any reason not clearly provided for in the Constitution.

The limits to exercise this right are defined by law. (This paragraph was added by bill no. 5735 of 9.2.2008). The state ensures the necessary assistance through scholarships and other resources to students who lack financial resources to continue their education. That is why, the state takes steps to make sure that people who need special education due to their situation can be useful to society. Only education, training, research and examination can be conducted in education and training institutions. These activities cannot be prohibited in any way. No language other than Turkish can be taught to Turkish citizens as their mother tongue in education and training institutions. Foreign languages taught in educational and training institutions and the rules governing schools providing education and training in a foreign language are regulated by the Constitution. The rules of the international agreement are reserved. The provisions of the constitution are supplemented by the articles of the Basic Law on National Education (Law No. 1739) concerning the right to education, equal opportunities and chances, and temporality, according to which every Turkish citizen has the right to attend primary school. Citizens can take advantage of educational institutions after primary education in terms of their interests, talents and abilities (article 7); - Equal opportunities are available for all men and women in education. Necessary aids are provided through free accommodation, scholarships, loans and other measures to ensure that successful students with a lack of financial resources have access to the highest level of education. Special measures are taken to teach children in need of special education and protection (article 8); it is crucial that the general and vocational education of individuals continue throughout their lives. In addition to educating young people, it is also an educational obligation to take the necessary measures to provide the lifelong learning of adults to help them positively adapt to their life and work (Article 9).

Teaching religion (catechesis) was defined in Art. 24 of the Constitution of 1982 entitled "Freedom of religion and conscience", according to which religious and moral education and upbringing takes place under the supervision of the state. Religious culture and moral education are obligatory subjects in primary and secondary schools. Moreover, catechesis and religious education depend only on the will of individual persons and the request of the legal representative of minors.

By comparison with the 1961 Constitution, "Religious education and teaching depends only on the will of individuals and the will of legal representatives of minors." Hence, the 1982 Constitution did not regulate the teaching of religion as a law and did not establish such a right. According to its regulations, the obligation to teach religion was consistent with the aim of providing a uniform religious culture and the same level of religious knowledge (no less nor more) in the society. The inclusion in the text "religious culture" rather than "religious education" points out that these courses are not aimed at acquiring religion and its propaganda, but provide objective and preliminary information about all major religions.

It is a generally accepted rule that the state may introduce obligatory education, which guarantees the absolute right to learning and regulates education. Primary education is compulsory under both national and international law. In fact, under the Constitution, "primary education is obligatory for all citizens, men and women." Taking into consideration that primary education is compulsory, it is worth remembering that the right to education is a fundamental right which does not recognize the right to choose and therefore limit freedom. In other words, the right to education is the only human right that includes obligatory primary education. International law recognizes that the state has the right and responsibility to compel children to attend school up to a particular age and to provide education.

5. CONCLUSION

The right to learning and education in the Republic of Turkey underwent a long evolution from its establishment in 1924 to the modern period, where the republican form of the Turkish state was reaffirmed in the Constitution of 1982. The right to education is now based on the regulations of the Constitution and ordinary laws which are consistent with international and European standards. Polish constitutional and statutory regulations in terms of the right to education also follow these standards.

The basic elements of the right to education concern its universality as regards freedom to learn and teach, express and publish scientific achievements and artistic creativity, and conduct research in these areas (Article 27 of the Constitution of the Republic of Turkey of 1982). The second of the provisions - Art. 42 included in Chapter II. The right and obligation to educate ensures that no one can be deprived of the right to education and learning. The range of the right to education is defined and regulated by the Act(...).

Generally, the attempts to reunite the Islamic religion with the foundations of the secular state seemed possible to fulfil under the constitution of 1961. Currently, it appears that the secular nature of the Turkish state is not threatened, although decisive steps are taken to implement religion into the public sphere and restore religious teaching in general education. This phenomenon is known as re-Islamization. Under the pretense of restoring citizens their due rights, the power concentrated around the prime minister, then President Erdogan, successfully started building a strong, modern state - "New Turkey" ("Yeni Türkiye") based on the Islamic regulations of faith and customs, openly referring to its Muslim origins (Surdel, 2017).

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