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Foreign Minors in Poland: Legal and Educational Aspects

(pp. 39–57)

Abstract

The author takes up the problem of foreign minors living in Poland, which was first noticed in this country at the beginning of the 1990s. In the Polish literature on the subject, the problem of migration and minors is most often discussed in the context of labour migration of Poles and problems related to the absence of parents in Poland. The problem of foreign minors living in Poland fits into a wider European context. The objective of this article is to understand the legal and demographic aspects of foreign minors as well as the dilemmas and challenges faced by Polish schools in the area of education. To pursue this cognitive objective, the author conducted an analysis of the relevant literature. In order to investigate the topic, two research questions were formulated: a) What is the Polish migration policy towards foreign minors from the legal perspective? b) What is the situation of foreign minors in Polish schools, including legal norms and problems connected with their education and upbringing?

In conclusion, it should be stated that Poland lacks a broad strategy and holistic policy from the government and non-governmental institutions on the integration of foreigners. Nevertheless, Polish law and institutional practices are aimed at safeguarding the interests of foreign minors and respecting children's rights, their subjectivity, and national and cultural identity. The upbringing of minor foreigners living in Poland poses new challenges for schools and teachers, who should acquire new competences

in intercultural education and educational practices aimed at students from other cultures. It should also be noted that there are no specialised centres capable of providing adequate care and assistance to such children, who are often victims of violence, crime and exploitation. Educational authorities and schools tend to incline towards the paradigm of inclusion and acknowledging the 'Other' when it comes to children from other cultures, rather than discrimination and opposition to the process of multiculturalism.

Keywords: foreign minors, school, Poland

Introduction

This article will address the issue of foreign minors who live in the Republic of Poland. It is worth noting that European researchers focus primarily on minors who come to the EU on their own (unaccompanied minors). On the other hand, in the American context, authors focus their research more on undocumented minors (Bhabha, 2014; Menjívar & Perreira, 2017). The problem of foreign minors was first noticed in Poland at the beginning of the 1990s, when migration increased and led to a situation in which Poland ceased to be only a country of transit, but also a destination country for many immigrants. In the Polish literature on the subject, the problem of migration and minors is most often discussed in the context of labour migration of Poles and problems related to the absence of parents in Poland (Trusz, 2018). Interesting research on the acceptance and integration of foreign minors and children of Poles who return from abroad can be seen in the Polish literature (Ogrodzka-Mazur, 2018). Nevertheless, the problem of foreign minors is still somewhat neglected in the Polish literature (Albański, 2020, p. 10).

It must be admitted that the problem of foreign minors in Poland fits into a wider European context (Università Telematica Internazionale Uninettuno, 2020). Peri (2016, pp. 641–643) observes that the EU's response to the pressing need to solve the problem of foreign minors is insufficient, and that the number of deaths of migrants in the Mediterranean

Sea is constantly increasing, while the public interest in the migration of minors is gradually decreasing.

Although the statistics on migration in Poland differ considerably from those in Western Europe, the country has also been witnessing a continuous increase in the number of foreign minors. Taking this fact into consideration, the aim of this article is to outline the problem of educating foreign minors in Polish schools. Based on an analysis of the literature on the subject, the author discusses legal and demographic aspects of the issue as well as dilemmas and challenges faced by Polish schools in the education of foreign minors. In this article, due to the dynamic migration situation in Poland related to the war in Ukraine (starting in March 2022), the author does not consider the situation of foreign students who have recently arrived in Polish schools.

In order to investigate the topic, two research questions were formulated:

- a) What is the Polish migration policy towards foreign minors from the legal perspective?
- b) What is the situation of foreign minors in Polish schools, including legal norms and problems connected with their education and upbringing?

1. An outline of the child in international and Polish law

In European countries the process that has led to full recognition of the rights of the child began several decades ago. Since the end of the 20th century, many countries have introduced legislation primarily focussing on the protection of children's interests. An analysis of the relevant international documents reveals that a holistic approach to children's rights was gradually developed. Initially, only their rights to care and protection were granted, but with time these were extended by a reflection on children's rights and their personal freedom (Błęszyński & Rodkiewicz-Ryżek, 2012, p. 100). The holistic approach to the rights

of the child is reflected in the UN Convention on the Rights of the Child of 1989, which states that the welfare of children, i.e. care, assistance, and support, is the responsibility not only of parents, but also of state institutions. Other important documents include the Convention for the Protection of Human Rights and Fundamental Freedoms, issued by the Council of Europe, and the European Convention on the Exercise of Children's Rights (1996). The main aim of the latter was to promote children's rights, including granting them the right to proceedings before judicial authorities (Ryng & Zegadło, 2007, p. 48).

It is worth mentioning at this point that the issue of protecting the rights of children was not addressed in Poland until after the First World War (Golczyńska-Grondas, 2014, p. 54). Moreover, Poland does not have a single legal act that holistically regulates the status of unaccompanied foreign minors. The situation of such children in Poland depends on whether their stay is considered legal (Krajowy Punkt Kontaktowy Europejskiej Sieci Migracyjnej, 2009, p. 5).

In Poland the issue of protecting the welfare of the child forms the foundations of family law, which is explicitly stated in Article 72 of the Constitution of the Republic of Poland (Konstytucja Rzeczypospolitej Polskiej, 1997). In family law 'the best interest of the child' is understood as a set of immaterial and material values which are necessary for the proper physical and spiritual development of a child (Łukasiewicz, 2019, pp. 64–68). The Ordinance of the Minister of Labour and Social Policy on foster care also applies to foreign children. Apart from the aforementioned legal regulations concerning foreigners, two other acts related to unaccompanied minors living in Poland are worth mentioning. Unaccompanied foreign minors who apply for refugee status, victims of human trafficking and foreign children in foster care may benefit from many specific solutions adapted to minors' needs (the Act on Family Support and Foster Care System and the Act on Foreigners).

2. The child in a multicultural context

Bogusław Śliwerski (2007), who often addresses the issue of the child in Polish pedagogy, argues that it is the 'child' who is the central figure in pedagogy and social change (pp. 101–133). Child rearing is based on the model of the relationship between a child and an adult (Jeziorański, 2015, pp. 43–64). The multicultural context implies educational activities for the pupils to get to know each other. Intercultural education is aimed at promoting new attitudes towards the 'Other'; it should foster the mutual enrichment of cultures, bring people closer together, shape commonly recognised values and develop attitudes of tolerance and acceptance of differences (Lewowicki, 2001, p. 161). The authors who investigate multicultural contexts mention the development of intercultural identity in children, which takes place through the so-called additive identity. It is based on building identity by adding knowledge and skills typical for the new community. Through this process, the child acquires points of reference for their old cultural and social identity (Goffman, 2007, p. 114). According to Sussman (2000, pp. 365–368), such additive identity is a necessary initial phase that leads to the development of new identity, called intercultural identity. Her model of the development of intercultural identity primarily emphasises the necessity to interactively build the awareness of identity, which only becomes possible when children come into contact with a culture other than their own.

For foreign children, the particularly important identities are cultural, national and ethnic ones. These are basic areas that testify to the very existence of a child/person. Cultural identity is based on a person's individual sense of belonging to the cultural heritage of a given culture (Nęcka, 2014, pp. 85–88). National identity is an equally important issue in the upbringing of children from migrant families, and, according to Kurczewska (1999, p. 288), particular attention in this process should be paid to developing a sense of community, language, traditions, national symbols and history. The authors observe that distortions and negative perceptions based on stereotypes and prejudices may lead to conflicts and antagonisms in children (Nikitorowicz, 2005, p. 105).

In many cases children experience a kind of trauma associated with living in a new environment (fear, anger, helplessness or sadness). In her studies on refugee children, Grzymała-Moszczyńska (1998) observed that they were 'half dead' (passive, apathetic, quiet and still) (pp. 172–173). Even if the sense of identity does not reach its apogee before adolescence, the child's early experiences of 'self' as a separate being are a necessary and fundamental element for building a future sense of inner stability (Latoszewska, 2012, p. 6). Researchers observe that the most important condition for foreign minors to 'feel at home' in Polish schools and in their new sociocultural reality is knowledge of the Polish language, which allows them to develop other communicative competences (Młynarczuk-Sokołowska & Szostak-Król, 2016, p. 152). Moreover, researchers indicate that integration is the best way to enter the culture of a new country after experiencing a 'culture shock'; integration is forged through an encounter and dialogue between the culture of the host country and the culture of immigrants/refugees (Grzymała-Moszczyńska, 2000, p. 18). In the context of migration, it is also important to pay attention to children's ethnic identity, understood as the maintenance of tradition, regional customs, religion and dialect. Nikitorowicz (1997, p. 170) is of the opinion that the stronger a sense of ethnic identity is, the easier the integration and acquisition of a secondary identity linked to new culture is. Research indicates that if young people are not rooted in their culture, they are more likely to encounter barriers which adversely affect the process of their integration (Grzymała-Moszczyńska, 1998).

3. Statistics and legal aspects of the situation of foreign minors in Polish schools

At this point of the article, it might be useful to define the term *migration policy*. In recent years Polish political scientists have made several attempts to define migration policy. Rajkiewicz (2004, p. 8) defines migration policy as a complex set of legal and institutional guidelines and regulations which affect migration trends. According to Duszczyk (2012),

‘migration policy covers all activities of the state related to the spatial movement of people’ (p. 32); thus, he refers to both the immigration policy and migration policy of a given country. In my analysis, I adopt the broader definition of migration policy proposed by Stefańska (2008), for whom it is ‘a set of measures implemented by the state authorities to create conditions and solutions conducive for the integration of immigrants into the various spheres of life of the host society’ (pp. 123–156). The measures the state can use within its migration policy include various regulations concerning foreigners (e.g. acquisition of citizenship), education policy, assistance to immigrant organisations and aid with housing and employment (Stefańska, 2008, p. 125).

Statistics show that in 2004–2005 there were over 6,000 foreign children in Polish schools, while in 2013–2014 their number had increased to about 7,500 (Markowska-Manista & Januszewska, 2016, p. 181). According to the data provided by the Educational Information System (*System Informacji Oświatowej*), in the 2018–2019 school year approximately 44,000 foreigners were enrolled in Polish schools, including post-secondary schools. This number included 206 students with refugee status, 778 applicants for international protection and 1,747 applicants for other forms of international protection (e.g. tolerated stay for humanitarian reasons) (Gov.pl., 2021).

We should also include statistics regarding the issue of unaccompanied foreign minors in Poland: in the mid-2000s there were only 318 of them. This number covered children in various types of institutions (i.e. care facilities and foster families). In terms of the number of such children, Mazowieckie Voivodeship was the leader (152 minors), with the smallest number being recorded in Łódzkie Voivodeship (1 minor) (Kukołowicz, 2021).

Several European documents should be mentioned in the context of foreign minors. One of them is the Council of the European Communities Directive on the Education of the Children of Migrant Workers, adopted on 25 July 1977 (77/486/EEC), which states that EU Member States should ensure that children are taught the language of the host country free of charge and should try to ensure that they are taught and

informed about the culture of their home country. Another important document regarding migrant children's right to education is the Charter of Fundamental Rights of the European Union of 14 December 2007 (OJ EU 2010 C 83). The third document that addresses the problem of migrant children's education (Rezolucja z dnia 2 kwietnia 2009 r. w sprawie kształcenia dzieci imigrantów, 2009) stresses that in order to integrate positively into the host society, migrant children must be provided with the opportunity to learn the language of the host country and to learn the language and culture of their home country.

In Poland, the amendment to the Social Welfare Act of 16 February 2007 was a breakthrough (Journal of Laws No. 48, item 380), as it provided a legal framework to offering support to foreign minors. According to Polish law (Article 10 of the Civil Code and Article 2 of the Act on foreigners), a foreign child is a person under 18 years of age who does not have Polish citizenship. From the legal perspective, the key factor for a minor foreigner living in Poland is whether they are under the care of parents or guardians. It is also important to determine the identity of a foreign minor in a situation where they are on the territory of the Republic of Poland without relevant documents (Sosnowska, 2012, items 32–40).

The legal status of foreign children learning in Polish schools can be divided into two categories: refugees and immigrants (Konwencja dotycząca Statusu Uchodźców, 1951). The legal basis that regulates the situation of foreign minors in Poland is the Ordinance of the Minister of National Education of 9 September 2016 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (Rozporządzenie z dnia 9 września 2016 r. w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które uczęszczały do szkół poza granicami kraju, 2016). It states that children of foreigners and children of Polish citizens returning from emigration have the right to attend Polish kindergartens, schools, and other educational institutions until the age of 18. Thus, Polish law grants children of foreigners the same right to education as children of Polish citizens (Konstytucja Rzeczypospolitej Polskiej, 1997, Article 70). Foreign children who attend Polish schools have the right to be assisted

by a special teacher (called an intercultural assistant or cultural assistant) (Prawo oświatowe, 2016).

4. Foreign minors in Polish schools – dilemmas and challenges

In recent years, especially since Poland joined the EU, the situation of foreign minors in Polish schools has been investigated by a number of researchers. First of all, they noticed a growing cultural diversity among students, as well as increasing helplessness, a lack of ability and a conviction among teachers that schools must adapt to the growing number of foreign students without adequate parental care.

In the eyes of researchers, Polish schools appear primarily as a place of dialogue and a meeting point of diverse cultures. Such an atmosphere should foster the exchange of values, the verification of stereotypes and the perception of the 'Other' as an opportunity for cultural exchange and for learning about the world and what we commonly call humanity (Dobrowolska, 2010, p. 61). Thus, schools should be open to 'otherness' and 'difference' (Bobaj & Wyszynska, 2009, p. 328). However, as Nikitorowicz notes (2002), the main task of school is to present the native culture, its values and its distinctiveness in detail, while fostering discovery, appreciation, dialogue and cooperation with people from other cultures (p. 264).

When discussing the situation of foreign minors in Polish schools, researchers also underscore the vital role that teachers/educators play in the process of these students' integration and the assistance offered to them. Even in the early 2000s, various authors observed that the school situation of unaccompanied foreign children and foreign minors living with their families was difficult. The main problems were that refugee children frequently dropped out of school and that teachers' had poor intercultural skills (Rabczuk, 2002). Research indicates that teachers are interested in cooperating with institutions that can support schools in their work with foreign minors. The exchange of experiences among teachers and with school counsellors or psychologists, methodological

guides and training courses on multicultural education are all considered valuable (Błęszyńska, 2010, p. 81).

Januszewska (2017, pp. 138–139) argues that adequate preparation of teachers and educators is a necessary condition for integrating foreign students into a new school and a new cultural environment. As Lewicki et al. (2006, pp. 16–18) point out, teachers should be willing and able to decentralise, go beyond their own culture, learn about other cultures and cooperate with others for the purposes of intercultural education. A weak point of Polish schools when working with foreign students is the unsatisfactory level of competence and inadequate preparation of teachers to work in multicultural environments (poor knowledge of foreign languages, the lack of a broader understanding of migration issues, poor cooperation with parents/legal guardians of foreign minors) (Butarewicz-Głowacka, 2015, pp. 103–104). Most often, due to the lack of previous experience in working in a multicultural environment, teachers and school counsellors do not understand the needs of their foreign students properly. What leaves much to be desired in teachers' work is the development of evaluation criteria for foreign children who require an individual approach and greater involvement in group work.

Foreign children and adolescents are provided with specific assistance, as they might have special educational needs (Krakowiak & Kołodziejczyk, 2017, pp. 206–207). Researchers describe the situation of foreign minors in Polish schools as difficult (Dobrowolska, 2019, pp. 128–130), which is primarily caused by their poor knowledge of the Polish language, which adversely affects the realisation of the education and upbringing programme. Other negative factors include inadequate preparation of schools to admit foreign minors, in terms of both appropriate teaching aids and satisfying their basic needs on the school premises (Butarewicz-Głowacka, 2015, pp. 106–114). Different gross enrolment ratios and different education systems in various countries lead to greater difficulties fulfilling the obligation of compulsory schooling, while different cultural codes and references to values lead to behavioural issues. Foreign minors are often withdrawn or aggressive, and they sometimes experience moderate xenophobia and racism. The reluctance of foreign children

to integrate is frequently triggered by the discriminatory behaviour (stereotyping or ethnic prejudices) of Polish students (Błęszyńska 2010, pp. 65–66). As Kolankiewicz observes (2015, pp. 78–79), it is not easy for children burdened with the traumatic experience of separation from their family to successfully manage the roles of a student and a peer, who is expected to build new relationships. That is why the process of integrating foreign students into the school environment is relatively slow.

The report from a study conducted 10 years ago listed the following as the most frequent problems facing foreign minors: language problems, the lack of understanding of Polish culture and customs, problems in student–teacher relations and religious problems (organising Christian religious practices or observing the Muslim diet) (Błęszyńska, 2010, p. 59). The report’s conclusions emphasise the need to assist children and young people from foreign families, although it is not an easy task due to a range of factors, such as culture shock, the minors’ interrupted lives, low motivation and learning problems and avoidance of class activities and interaction with peers (Błęszyńska, 2010, p. 98). The authors observe that schools often adopt strategies which are a certain compromise, a balanced option between obligatory integration and the process of socialisation (Włodarczyk & Wójcik, 2014, pp. 184–185). An analysis of relevant articles reveals that the problem of foreign children in Poland is not only a matter of passing on knowledge to them, but also one of teaching them how to observe the rules, how to integrate with peers and how to follow everyday cultural practices.

Conclusions

As shown above, there is no single legal act in Poland which would regulate the difficult situation of foreign minors in a holistic way. The relevant Polish laws touch on particular aspects of foreigners’ stay in Poland, but these are very general and very rarely do they directly address the problem of foreign minors in the Polish context. Thus, Poland lacks a strategy and holistic policy from the government and non-governmental

institutions regarding the integration of foreigners. Nevertheless, the literature on the subject demonstrates that Polish law and institutional practices are aimed at safeguarding the interests of foreign minors and respecting children's rights, subjectivity and national and cultural identity.

With reference to foreign minors in Poland, the authors observe that realising the right to education and the obligation of schooling goes beyond the existing standards of work in Polish schools. It is also worth mentioning that the upbringing of minor foreigners living in Poland poses new challenges for schools and teachers, who should acquire new competences in intercultural education and educational practices aimed at students from other cultures. Despite the good standards of international legal protection of foreign minors, no holistic policy aimed at integrating unaccompanied children migrating to our country has been developed in Poland so far (Karpowicz 2009, pp. 221–241).

Despite the fact that schools and educational centres are involved in the education of foreign minors, there are no specialised centres capable of providing adequate care and assistance to such children, who are often victims of violence, crime and exploitation. Educational authorities and schools tend to incline towards the paradigm of inclusion and acknowledging the 'Other' when it comes to children from other cultures, rather than towards discrimination and opposition to multiculturalism.

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