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THE RIGHT TO HEALTH AND SPORT²

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Prawo do ochrony zdrowia a sport (Streszczenie)

W art. 68 ust. 5 Konstytucji Rzeczypospolitej Polskiej uregulowany został obowiązek nałożony na władze publiczne, by popierały kulturę fizyczną i jej rozwój, zwłaszcza wśród dzieci i młodzieży. Może to być realizowane poprzez, między innymi, podejmowanie szeregu działań ze strony państwa. Celem artykułu jest zarysowanie programów rządowych związanych ze sportem, mających na celu realizację działań politycznych w odniesieniu do polityki społecznej, popierającej uprawianie sportu.

Słowa kluczowe: sport, polityka sportowa, prawo do ochrony zdrowia, Konstytucja Rzeczypospolitej Polskiej.

Summary

Article 68(5) of the Constitution of the Republic of Poland regulates the obligation imposed on public authorities to support physical culture and its development, especially among children and young people. This can be realised by, among other things, taking a number of measures on the part of the state. The aim of this article is to outline the government's sport-related programmes to implement policy measures in relation to social policy supporting the practice of sport.

Key-words: sport, sport policy, right to health care, Constitution of the Republic of Poland.

1. Introduction

The nineteenth century and the beginning of the twentieth century were primarily a period of the formation of capitalist society. New problems were emerging, imposing the need for a different view of the problems of individual rights and freedoms. The concept of an active role for the state in social and economic processes began to take shape - the state began to take care of the universality of education, social security regulations began to appear, as

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did labour conditions, health care and, finally, the first elements of state interventionism in the economy.

In the new social conditions, it became apparent that the traditional concept of natural rights, was no longer sufficient, as it omitted the social sphere. Hence the contestation of the traditional approaches by the proponents of social democracy, who demanded extensive forms of redistribution of national income and thus rejected the classical concepts of freedom and property. The conviction emerged that individual rights and freedoms – regardless of their natural origin – are evolutionary in nature and thus must be subject to certain limitations. New rights and freedoms began to take shape in the new social conditions. Collective rights emerged in the traditional sphere of political rights, primarily related to the activities of political parties and trade unions. Rights of a completely new nature began to take shape, especially those relating to the social and economic sphere (the right to social security, to health care, to education or, perhaps most controversially, the right to work). The question arose as to whether and with what degree of categoricity these second-generation rights should be reflected in constitutional texts.

2. The right to health protection

In accordance with Article 68 (5) of the current Constitution of the Republic of Poland³, the public authorities shall promote the development of physical culture, especially among children and young people. It can thus be concluded that the state sees an important role of physical culture in the context of the right to health protection guaranteed to citizens in Article 68(1) of the Constitution⁴. Physical culture is therefore a constitutionally noted ‘social benefit’ that plays a significant role within the broadly understood right to health protection and thus the general availability of forms of physical activity flowing from this right (the right to health protection)⁵. Article 68(5) of the Constitution regulates the obligation placed on public authorities to promote physical culture and its development, especially among children and young people. This can be implemented through the construction of sports facilities, bicycle paths, ice rinks, swimming pools, the organisation

³ Constitution of the Republic of Poland of 2 April 1997, Dz. U. No. 78, item 483, as amended, hereinafter: the Constitution.

⁴ See in more detail: A. Kuchciak, *Ruch to zdrowie*, czyli rzecz o popieraniu rozwoju kultury fizycznej przez władze publiczne, „Acta Erasiana” 2018, XVI, p. 104 et seq.

⁵ M. Biliński, *Państwo a sport. Węzłowe zagadnienia prawne*, Kraków 2011, p. 54. [chrome-extension://efaidnbmnnnibpcajpcglefindmkaj/https://ruj.uj.edu.pl/server/api/core/bitstreams/0f2ee1f5-1025-4076-bfbd-02320d4a9d77/content](https://ruj.uj.edu.pl/server/api/core/bitstreams/0f2ee1f5-1025-4076-bfbd-02320d4a9d77/content) [access: 24.10.2024].

of competitions for children and young people, the promotion of such activities and campaigns urging people to practise sport.

At the same time, it follows from the Act of 25 June 2010 on sport⁶ that sport is a fundamental element of physical culture. Indeed, according to Article 2(1), sport is any form of physical activity which, through casual or organised participation, aims to develop or improve physical and mental fitness, develop social relations or achieve sporting results at any level⁷.

The positioning of physical culture in the Constitution as well as the very content of the definition of sport makes it possible to conclude that the fundamental source of the right to any sporting activity is the right to health. The regulation of this right in the Constitution leads, in turn, to the conclusion that it has the character of a subjective right with negative content (of a liberty nature).

In addition to the right to protection of health, expressed in Article 68 of the Constitution, there is also an extra-legal plane, related in some sense to the good that is health. This is about the freedom in which the individual can freely shape his or her behaviour in the sphere of sport. Above all, it is about the choice of such forms of activity that suit him or her, or simply the possibility to refrain from undertaking any activity.

It can therefore be said that the basis for the whole social plane of sport will be health protection in two senses. Firstly as a freedom that is not framed by law. In this sense, everyone has the right, for example, to take care of his or her health through an amateur form of sport. Secondly, we can also speak of a public subjective right, regulated by the Constitution, which speaks, among other things, of promoting the development of physical culture, especially among children and young people. This social aspect finds its development in the Sports Act, whose basic axiological premise is to place the source of the right to practise sport in the inalienable sphere of citizens' freedom. Consequently, the legislator chose to regulate the forms and principles of sport only to the extent that this would serve to protect the social benefits flowing from the phenomenon of sport. The protection of these 'public goods', which will certainly include the widely understood right to health protection and the resulting general availability of forms of physical activity, but also the social, promotional and educational role of sport, should, in accordance with the legislator's intention, determine the area of the state's legitimacy to regulate sport⁸.

⁶ Act of 25 June 2010 on sport, i.e. Dz. U. of 2024, item 1488 as amended, hereinafter the Sports Act.

⁷ Article 2(2) of the Sports Act.

⁸ M. Biliński, *op. cit.*, p. 29.

3. Tasks of public authorities in the social function of sport

The fundamental duties of the state and its authorities in connection with the social function of sport are obviously linked to the free nature of the subjective right at its root. The duty of the state should therefore, in the broadest terms, consist in not preventing the right holder from exercising the right, and the right holder has a corresponding right to ensure that the state does not take action that restricts or prevents the right holder from exercising the right. However, with regard to sport and its social sphere, the state and its authorities also have more specific obligations. Firstly, it is already clear from the aforementioned Article 68(5) of the Constitution that these include promoting the development of physical culture. In particular, this may, for example, mean financing the construction of sports facilities and taking educational and organisational measures for the development of a person's physical talents, providing him or her with opportunities for active recreation and sport⁹.

The provision of Article 68(5) of the Constitution finds its particularisation in Chapter 6 of the Sports Act, in which the legislator specifies what support for sport by public authorities may consist in. The legislator has decided, in accordance with Article 27 of the Sports Act, that the creation of conditions, including organisational conditions, conducive to the development of sport constitutes the own task of local authorities. Sports tasks will therefore be among those performed and financed from the municipality's own budget in its own name and on its own account¹⁰. The identification and implementation of this public purpose, in turn, is a condition for the award of a grant to a sports club¹¹. A grant from the budget of a local authority is thus the first example of a specific instrument of support for sport by public authorities. At the same time, it is worth noting that the grant will only be available to a sports club that operates, but not for profit. It is therefore not enough to fulfil the premise of fulfilling a public purpose. Professional organisational forms operating in sport mainly for profit will not, therefore, be able to obtain a subsidy, even if at the same time they perform social functions in sport¹².

⁹ M. Florczak-Wątor, *Komentarz do art. 68 Konstytucji RP*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, wyd. II, red. P. Tuleja, Warszawa 2023, art. 68. <https://sip-1lex-1pl-10000f4f22328.han.uwm.edu.pl/#/commentary/587806662/736765?tocHit=1&cm=RELATIONS> [access: 12.03.2025].

¹⁰ Szerzej: E.J. Krześniak, *Komentarz do art. 27*, [in:] *Ustawa o sporcie. Komentarz*, Warszawa 2020, art. 27. <https://sip-1lex-1pl-10000f4f22328.han.uwm.edu.pl/#/commentary/587833014/630454/krzesniak-eligiusz-j-ustawa-o-sporcie-komentarz?cm=URELATIONS> [access: 11.09.2024].

¹¹ Article 28 of the Sports Act.

¹² More: M. Badura, H. Basiński, G. Kałużny, M. Wojcieszak, *Komentarz do art. 28*, [in:] M. Badura, H. Basiński, G. Kałużny, M. Wojcieszak, *Ustawa o sporcie. Komentarz*, Warszawa 2011, art. 28. <https://sip-1lex-1pl->

In accordance with Article 29 of the Sports Act, subsidies (for practising or organising sport and its promotion) for sport can also be launched from the central level. In particular, the Ministers for Physical Culture and for Education are competent in this respect¹³. The possibility of support for sport from both local and central authorities has also been retained with regard to another measure - i.e. the establishment and funding of sports scholarships and prizes and awards¹⁴.

4. Government programmes in the implementation of the social function of sport

As W. Wozniak¹⁵, the term 'public policy' is implicitly understood as everything that includes the issue of institutional planning and implementation of the state's tasks, together with the way in which it is managed, both by formal (law) and informal (management styles) activities of political actors and interest groups. With regard to sport and its social sphere, the state and its bodies therefore have specific responsibilities because, as has already been highlighted, sport is part of state policy, and this policy is formulated in accordance with ideological and socio-economic developments. Thus, first and foremost, the legal and organisational positioning of sport and physical culture depends on legislative assumptions and provisions.

A physical activity survey conducted in 2013 on behalf of the Minister (2014 report of the Mother and Child Institute) on a group of children and adolescents confirms that the majority did not meet the WHO recommendations for minimum levels of physical activity¹⁶. In modern, developed societies, comprehensively understood physical activity and sport are clearly accentuated cultural values to influence human development, health and quality of life. They are an important platform for educational and socialisation processes, implementing life and functioning in society¹⁷. Government programmes that promote and support physical activity are an important link in shaping such lifelong attitudes, behaviours and skills. A number of government programmes in the implementation of the social function of sport are presented below.

10000f4f22328.han.uwm.edu.pl/#!/commentary/587317592/115032?tocHit=1&cm=URELATIONS [access: 1.10.2024].

¹³ See. E.J. Krześniak, op. cit.

¹⁴ Article 31 et seq. of the Sports Act.

¹⁵ W. Woźniak, *Polityka wobec sportu. Sport jako element polityki publicznej*, „Problemy Polityki Społecznej” 2017, vol. 37, p. 34.

¹⁶ <https://www.gov.pl/web/sport/aktywnosc-fizyczna-dzieci-i-mlodziezy> [access: 10.11.22024].

¹⁷ Chrome-

extension://efaidnbmnnnibpcajpcglefindmkaj/[https://www.lodzkie.pl/files/sport/programy_sportowe/MU LTISPORT.pdf](https://www.lodzkie.pl/files/sport/programy_sportowe/MU_LTISPORT.pdf) [access: 2.12.2024].

5. Government 'KLUB' programme

The Government's 'KLUB' Programme is an innovative model of direct support for small and medium-sized clubs. Funding can be obtained by an entity operating for at least 3 years in the form of an association and providing sports training, which is aimed at children and young people up to the age of 18¹⁸.

The programme is aimed at sports clubs operating in the form of an association, whose primary statutory objective is to promote sport and physical activity for children and young people in local communities. In addition, the club must demonstrate that it has had a formally registered statutory activity for at least 3 years prior to the grant application date. The amount of grant applied for under the 'CLUB' Programme in the case of a single-section club is PLN 12,000, in the case of a club applying for support for more than one section - a 'multi-section club' - PLN 17,000. The Programme may only be implemented between 1 January and 30 November 2024, with the club submitting an application to participate in the Programme itself determining the date of implementation of the task, which must fall within the aforementioned time frame. The club is obliged to carry out sports/sports/recreational activities for the entire - declared in the application - period of the task implementation. Within the framework of the grant applied for, the allocated funds may be used for: - remuneration of trainers conducting systematic sports/sports/recreational activities - obligatory component of the Programme, - purchase of sports equipment and/or organisation of sports camp - optional components;

The amount of the grant awarded may be distributed in any proportion to the above components of the Programme, with the assumption that the basic compulsory component is the provision of systematic classes for children and young people. Only children and/or young people up to the age of 18 may be direct participants of the classes and sports camps.

6. Sporting talents

The Sport Talents programme¹⁹ is implemented by the Ministry of Sport and Tourism in cooperation with the Ministry of National Education. Its aim is to diagnose the level of physical fitness of children in Polish schools and to identify the most talented pupils in sport. The foundation of the programme is the concept of physical fitness as a condition for

¹⁸ <https://rzadowyprogramklub.pl/> [access:15.12.2024].

¹⁹ <https://sportowetalenty.gov.pl/> [access:15.12.2024].

health, while the tool enabling the operationalisation of activities is the IT platform SportoweTalenty.pl - made available to teachers for the purpose of entering and monitoring the results of somatic measurements and fitness tests carried out during physical education lessons. The data collected will allow: population-based assessment of physical fitness; assessment of the somatic and motor predispositions of individual programme participants to practise sport; building reference (reference) scales for assessing the physical fitness of children and young people in Poland. The idea behind the creation of Sport Talents was to prepare an easy-to-use tool for measuring and assessing physical fitness. The tool, which is available free of charge on the Internet, can be accessed by anyone interested in the physical condition of Polish society. It can be used by teachers, parents, coaches, research teams, government employees and, above all, children and young people. The tool can serve the statutory purposes of sports clubs as well as sports associations and other entities active in the field of sport.

A dramatic decline in the level of physical fitness of children and young people has been observed in Poland for three decades. Introducing a permanent mechanism for monitoring changes in physical fitness in schools creates the possibility of obtaining reliable information on the state of health of young Polish generations in a simple way. It is the identification of health through the prism of its positive measures and indicators, which since the middle of the 20th century have included physical fitness.

By examining and assessing physical condition, the younger generations will be able to develop attitudes of care for their own health, physical fitness, fitness and beauty of their own bodies, as well as supporting the pursuit of sporting dreams. Lifestyle changes, poor eating habits and reduced physical activity have a major negative impact on the current state of health of children and young people. Research conducted by scientific bodies shows that an increasing number of children and adolescents in Poland have a problem with inappropriate body weight. Reduced physical fitness in children and adolescents has a negative impact on their functioning in adult life.

7. School Sports Club

The School Sports Club programme²⁰ is a systemic activity aimed at primary and secondary school students. The programme aims to create space for additional physical activity, carried out in the form of sports and recreational activities under the supervision of a

²⁰ <https://www.szkolnyklubsportowy.pl/> [access:15.12.2024].

physical education teacher at the school. It also provides motivation to undertake physical activity, focusing in particular on children and young people with lower physical fitness, who are less likely to engage in leisure-time physical activity and who are not covered by regular forms of physical activity such as training in a sports club. Systematic, extracurricular sports activities within the SKS Programme are conducted in a variety of modern and attractive forms.

Classes conducted as part of the Programme take place in 60-minute training units, twice a week, in groups of at least 15 people.

The objectives of the Programme are: 1. to stimulate and shape the habit of undertaking physical activity by children and young people. 2. to improve physical fitness, health and quality of life of children and young people, including the prevention of overweight and obesity. 3. to promote healthy and active lifestyles among children and young people. 4. to increase the offer of freely available sports and recreational activities for children and young people. 5. to motivate less active and physically fit children and young people to take up physical activity, with particular emphasis on girls. 6. to create conditions for the development of talents and sport interests of the younger generation. 7. to optimise the use of the local sports infrastructure, including school facilities. 8) To promote a variety of sports among children and young people. 9. to support staff working with children and young people in the field of sport.

8. Active School

Active School is a programme²¹ designed to achieve the strategic objective in the area of physical culture - Active and healthy society. The programme is a comprehensive support for physical activity aimed in particular at children and young people, but also at adults. By making optimal use of school and local authority sports infrastructure and providing professional coaching support, we enable the activation of society at a local level.

9. Conclusion

The essence of socio-economic rights was the establishment of an obligation on the part of the state to undertake certain undertakings enabling each entitled person to obtain the actual rights to a pension, a pension, an education in a public school or a place in a public hospital. The enshrinement of these rights in the constitution obliged the state to develop

²¹ <https://www.aktywnaszkola.pl/> [access:15.12.2024].

organisational activity and, on the part of the citizen, created a claim allowing him or her to claim the benefits to which he or she was entitled. This meant a complete departure from the understanding of the role of the state only in terms of the prohibition of interference in the sphere of individual freedom - the new social rights were seen as positive rights, understood as a sphere in which an order to act was formulated under the authority of the state. There was no doubt, however, that the chance of realising these positive rights depended to a large extent on the economic capacity of the state, and the multiplication of claims constitutionally known to citizens might prove risky. Hence, provisions began to appear in constitutions which were not framed as rights (the subjects of which were directly citizens), but as principles of state policy in certain areas (e.g.: the Republic takes care of the education and professional upgrading of the working people - Article 35(2) of the Italian Constitution of 1947, the Public Authorities pursue a policy aimed at full employment - Article 40(1) of the Spanish Constitution of 1978). They established an obligation for the state to take certain courses of action, but no individual claims that could be asserted by citizens resulted from this obligation. The 1997 Constitution used a similar regulatory technique.

BIBLIOGRAPHY:

- Badura M., Basiński H., Kałużny G., Wojcieszak M., *Komentarz do art. 28*, [in:] M. Badura, H. Basiński, G. Kałużny, M. Wojcieszak, *Ustawa o sporcie. Komentarz.*, Warszawa 2011.
- Biliński M., *Państwo a sport. Węzłowe zagadnienia prawne*, Kraków 2011.
- Florczak-Wątor M., *Komentarz do art. 68 Konstytucji RP*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz, wyd. II*, red. P. Tuleja, Warszawa 2023.
- Krześniak E.J., *Komentarz do art. 27*, [in:] *Ustawa o sporcie. Komentarz*, Warszawa 2020.
- Kuchciak A., *Ruch to zdrowie*”, czyli rzecz o popieraniu rozwoju kultury fizycznej przez władze publiczne, „Acta Erasmania” 2018, XVI.
- Woźniak W., *Polityka wobec sportu. Sport jako element polityki publicznej*, „Problemy Polityki Społecznej” 2017, vol.