

**Danuta Kurzyna-Chmiel**  
University of Silesia in Katowice  
ORCID: 0000-0001-9168-5874  
d\_kurzyna\_chmiel@op.pl

## **The Legal and Organizational Framework of Preschool Education in Poland**

### **Introduction**

The initial stage of education in our country is preschool education. It is aimed at supporting the individual development of a child in the first years of their life, shaping their intellectual/cognitive and social skills, and above all, supporting the family in bringing them up and preparing them for school. The right to preschool education is one of the most important rights of an individual in the field of education. According to Art. 31 sec. 1 of the Education Law Act<sup>1</sup>, it covers children from the beginning of the school year in the calendar year in which they turn 3 years old and lasts until the end of the school year in the calendar year in which they turn 7. Preschool education is provided in kindergartens, preschool departments in primary schools and in other forms of preschool education. So, whilst there are several types of institutions available, kindergartens are still the most popular. The aim of this article is to present the legal and organizational framework in which preschool education takes place. The goal will be achieved by analysing the legal regulations, presenting the views of the doctrine and illustrating the issues discussed with significant examples from judicial decisions. A variety of both public and private institutions will be presented and the legal aspects of preschool education will be explained. The analysis of the tasks of the local community as a local administrative body competent for the area in question is to show their primary role.

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<sup>1</sup> The Act of 14.12.2016 (consolidated text Journal of Laws 2020, item 910).

## Preschool education, basic issues

Preschool education is the stage preceding the beginning of school education<sup>2</sup>. It is worth noting that the Constitution does not specify it. There is only a provision referring to the upper limit of the compulsory education, i.e. 18 years old. The lower limit of this obligation is defined by the Education Law Act, introducing obligatory one-year preschool preparation, the so called reception class (Art. 31 sec. 5). Also in the literature there are views that classify the implementation of this preparation and compulsory schooling as manifestations of fulfilling the educational obligation in a broad sense<sup>3</sup>. The compulsory one-year preschool preparation, much like the compulsory school education, has an administrative and legal character. It arises by law and is related to the child reaching the required age – currently it is the age of six. Parents or legal guardians of a child subject to this obligation are obliged to fulfil numerous obligations, which include:

- completing the activities related to enrolling a child in a kindergarten, preschool class in primary school or in another form of preschool education,
- ensuring that the child attends classes regularly,
- informing the headmaster of the primary school in the circuit in which the child resides by 30 September each year about the fulfilment of this obligation abroad or at a diplomatic mission of another country,
- providing the child with the learning conditions specified in the home education permit – in the case of a child fulfilling the obligation outside the kindergarten, preschool class in primary school or in another form of preschool education.

The construction of a modern model of organization of preschool education in our country should be associated with the beginning of the process of transferring kindergartens to the responsibilities of local governments, which took place in 1991. Since then, running public kindergartens and organizing compulsory one-year preschool preparation have become the local communities' own tasks<sup>4</sup>. There are also attempts to lower the age of fulfilling this obligation. As far back as 2009, local communities were obliged to enrol children at the age of 5 and 6 in kindergartens. According to the plans at that time, which were finally withdrawn, the compulsory education of 6-year-olds was to take place in 2012. In the current legal situation, the obligation of one-year preschool preparation applies only to 6-year-old children, and education at school begins at the age of 7.

<sup>2</sup> As a result of the school structure reform in 2017, consisting in the introduction of 8-grade primary schools, the fulfilment of compulsory education has also changed. Currently, pupils are covered by this obligation from the age of 7 to the end of the eighth grade of primary school, but not longer than until the age of 18.

<sup>3</sup> M. Pilich, *The Act on the Education System. Commentary*, Warsaw 2015, p. 275.

<sup>4</sup> For more about this process see: D. Kurzyna-Chmiel, *Education as a public task*, Warsaw 2013, p. 102–111.

Currently, all preschool education includes children from the beginning of the school year which falls in the calendar year in which they turn 3 and lasts until the end of the school year in the calendar year in which they turn 7. The provisions provide for exceptions to this rule. There is a possibility of introducing a child to preschool education earlier and later. The optional preschool education can be utilised when the child is 3 years old. The upper limit for this possibility is the beginning of the school year in the calendar year in which the child turns 6. The regulations allow for the possibility of placing a child in pre-school education even earlier, i.e. at the age of 2.5 years. However, only the “particularly justified cases” mentioned in Art. 31 sec. 3 of the Educational Law Act must occur in this respect. The legislator does not specify what constitutes the “particularly substantiated cases”, so we are left with an imprecise phrase. The headmaster’s decision based on this premiss is discretionary<sup>5</sup>. It is not necessary to issue an administrative decision in this matter, as it is not about the fulfilment of an administrative and legal obligation. The legislator also does not provide for such a necessity. We deal with a different situation when deciding whether to start compulsory schooling earlier or later. Such cases do require an administrative decision. Therefore, a six-year-old child may be admitted to primary school earlier than the statutory obligation arises. The decision in this respect is made by the headmaster of the circuit school competent for the child’s place of residence, and the request in this matter should be submitted by the child’s parents or legal guardians. If the conditions specified in the Education Law Act (Art. 36 sec. 1-2) appear, a positive decision is issued. These conditions include: utilising preschool education in the school year preceding the school year in which the child is to start primary school, or having an opinion on the possibility of starting primary school education, issued by a public or private psychological and pedagogical counselling centre. Importantly, a child who is admitted to primary school earlier than required by law is exempt from the compulsory one-year preschool preparation.

The duration of preschool education is also influenced by shifting the lower limit of the compulsory schooling due to its postponement. The decision in this matter is also made by the headmaster of the circuit public primary school. The proceeding is initiated by an application submitted by the parents (legal guardians). Compulsory education is postponed for one year. However, if a child assessment concludes with a decision on the need for special education, then in accordance with Art. 31 sec. 2 of the Education Law Act, the child may attend preschool education up to the age of 9. In this case, it is necessary to reissue the decision every year. The application must be accompanied by an

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<sup>5</sup> These cases include in particular: the child’s achievement of preschool readiness, including coping with self-care activities, the ability to communicate their needs, or parents’ professional duties.

opinion which shows the need to postpone the child's obligation of compulsory education in a given school year, issued by a public/private psychological and pedagogical counselling centre. A child whose compulsory schooling has been postponed continues preschool preparation. As for the legal application of the opinion on the postponement of compulsory education, in the author's opinion, it should not be treated as a form of co-deciding within the meaning of Art. 106 of the Code of Administrative Procedure, but only as evidence in pending proceedings before the headmaster<sup>6</sup>. Parents may appeal against the discretionary decision of the headmaster of the circuit primary school to the school superintendent with competence over the school's location. The final decision may also be appealed against to an administrative court.

### Tasks of the local community

Establishing and running preschool education institutions and providing places for all eligible children aged 3–7 is the responsibility of the local communities. This task is financed with the participation of funds from the state budget, paid in the form of a purposed grant, and from 2017 also an educational subsidy. The right to preschool education was extended in our country gradually following the Amendment of the Act on the Education System of 2013 entering into force<sup>7</sup>. This process was completed on 1 September 2017. This right was then granted to children who turn three at the beginning of the school year which falls in a given calendar year (Article 31 sec. 7 of the Education Law Act). In this case, one can speak of a claim against the local community in which the child resides (determined in accordance with Art. 26 of the Civil Code) for access to preschool education in a kindergarten, preschool department or another form of preschool education<sup>8</sup>. Therefore, the obligation of the local community is correlated with this claim.

The fulfilment of the right to preschool education by children aged 3-7 years old is to provide them with the possibility of having preschool education, but what is worth emphasizing, not necessarily in state-owned institutions and not necessarily in those chosen by their parents. The legislator (as it seems), in an attempt to support the local communities, some of which do not have a sufficient number of places in their own institutions, allowed the possibility of supplementing the communal offer by non-public institutions on

<sup>6</sup> Compare: M. Pilich, op. cit., p. 322.

<sup>7</sup> Act amending the Act on the Education System of 13.06.2013 (Journal of Laws of 2013, item 827).

<sup>8</sup> See: D. Kurzyna-Chmiel, *The Foreigners' Right to Learn – the Analysis of National Legal Solutions in the Area of the Education System*, „Studies in Law and Administration System” 2020, issue 47, p. 87; A. Szczechowicz, *A Few Comments on the Responsibility of Public Authorities in Poland*, „Studies in Law and Administration System” 2019, issue 43, p. 325.

certain principles. This task is performed by the local community by “providing the child with the opportunity to benefit from preschool education”, and therefore not only by running its own facilities. The range of facilities that offer preschool education includes:

1) state-owned kindergartens or other public forms of preschool education run by the local community, or

2) state-owned kindergartens or other public forms of preschool education run by another legal person or a natural person, located within the local community, or

3) private kindergartens, preschool departments in private primary schools or other non-public preschool education that meet the criteria set out in the Education Law Act. These criteria require, among other things, that the duration of free education, upbringing and care cannot be shorter than 5 hours offered in communal facilities; the fee may not exceed the amount of the fee determined by the local community; the number of pupils in the preschool group does not exceed the maximum number of pupils allowed in a state-run preschool class, the records of the teaching, upbringing and care program are kept to the standards established for public kindergartens.

In addition, it is worth noting that the fulfilment of the obligation of preschool education can be realized in rehabilitation and educational centres where only children with a certificate of need for special education due to multiple disabilities are directed, one of the assessment findings being intellectual disability.

Establishing and running preschool education institutions and providing places for all eligible children, registered in the recruitment process, is the task of the local communities<sup>9</sup>. A local community that does not provide all eligible children with a place for preschool education is required to conduct an open competition for offers. According to the act of 27.10. 2017 on financing educational tasks, Art. 22 sec. 4<sup>10</sup> it can be said that the provisions quite clearly guarantee those children entitled the possibility of using preschool education. However, as shown by the Supreme Audit Office report from 2019<sup>11</sup>, the reality differs significantly from the legal status. “In almost half of the local communities audited by the Supreme Audit Office there were problems with the availability of preschool care. The number of applications for the admission of children exceeded the number of places available by an average

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<sup>9</sup> For more about local authorities' tasks, see: B. Dolnicki, *Local Government*, Warsaw 2019, p. 373; I. Lipowicz, *Local Governments in the 21 Century*, Warsaw 2019, p. 145; I. Skrzydło-Niżnik, *The Model of the Local Government System in Poland against the Background of Administrative Law*, Cracow 2007, p. 294.

<sup>10</sup> The Act of 27.10.2017 on Financing Educational Tasks (Journal of Laws of 2020, item 17 and 278).

<sup>11</sup> Report of the Supreme Audit Office [NIK] of 2019, *Provision of pre-school care by municipalities*, <https://www.nik.gov.pl/kontrol/wyniki-kontroli-nik>.

of 30–60%. Almost one-third of the children did not get into the kindergarten of their parents' choice. Almost all of them were three- and four-year-olds. In some local communities, parents were not shown alternative facilities or were offered ones that were unattractive, e.g. due to their location or opening hours"<sup>12</sup>. In almost half of the local communities audited by the Supreme Audit Office (14 out of 30), in a manner inconsistent with Art. 31 sec. 8 and 9 of the Educational Law Act, the full availability of preschool care was not ensured. As research shows, in self-government kindergartens, preschool departments and other forms of preschool education, places have been prepared for up to 80% of children, including in some local communities only 23–60% of eligible children. On the other hand, the number of submitted applications for admitting children to kindergartens in these local communities was higher (on average by 30–60%) than the number of available places<sup>13</sup>.

The basic condition for ensuring the availability of preschool education is the correct definition of the networks of public kindergartens and preschool departments in primary schools run by the local communities. This obligation belongs to local community councils. Additionally, if in accordance with Art. 32 sec. 2 of the Education Law Act, there are needs justified by demographic and geographic conditions, the network can be supplemented with other forms of preschool education, which are organized closest to the children's place of residence. In this matter, the local community council adopts a resolution, the content of which consists of an indication of the names and addresses of public kindergartens, preschool departments in primary schools and other forms of preschool education. It is also possible to include public kindergartens and other forms of preschool education operated by entities other than the local community into the network of the local community<sup>14</sup>.

A fee is charged for using public kindergartens and other forms of preschool education in excess of the free hours<sup>15</sup>. The legal basis for the collection of fees is Art. 52 sec. 15 of the Act on financing educational tasks, according to which: "fees for using preschool education in public preschool education institutions run by local government units and fees for having meals in such institutions constitute non-tax public-law budget duties referred to in Art. 60 sec. 7 of the Act of 27 August 2009 on public finance". Prior to the entry into force in 2018 of this provision, which explicitly mentions the legal nature of the fee, a view

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Judgment by the Provincial Administrative Court in Olsztyn of 13.11.2012, File Ref. II SA/OI 1167/12; Judgment by the Provincial Administrative Court in Wrocław of 18.02.2009, File Ref. IV SA/Wr 579/08 LEX issue 546075.

<sup>15</sup> See: Judgment by the Supreme Administrative Court [NSA] of 28.10.2009., I OZ 1008/09, LEX issue 571078; Judgment by the Provincial Administrative Court in Wrocław of 8.08.2006, IV SA/Wr 94/06, [www.nsa.gov.pl](http://www.nsa.gov.pl)

became established in the case-law and literature<sup>16</sup> that fees for kindergarten services are of a civil law nature, that is to say, based on the principle of equality of parties, which is characterized by equivalence<sup>17</sup>. The consequence of the current solution is a clear inequality of the parties and the possibility of using the funds obtained in this way to finance the local community's own tasks. This superiority is expressed in granting authority to one of the parties, and the legal position of the parent / legal guardian is determined by the resolution of the local community council, which decides on the time of free education, upbringing and care and the amount of fees for the use of preschool education in public kindergartens and other forms of preschool education including a preschool department in a public primary school. The amount of the fee for the time exceeding 5 hours of free classes may not exceed PLN 1 per hour of classes. This is a statutory limit on the amount of fees for using public forms of preschool education, effective from 1 September 2013.

In order to further increase the popularity of preschool education in our country, as of 1 January 2017, the possibility for the authority to charge fees for the stay of a child aged 6 in a public preschool education institution was abolished. These fees are collected until the end of the school year which falls in the calendar year in which the child reaches the age of 6. This solution was introduced by the amendment to the Act of 1 December 2016 on the income of local government units and certain other acts<sup>18</sup>. Six-year-old pupils attending kindergartens, preschool departments and other forms of preschool education received an educational subsidy. Parents and legal guardians then pay only for the child's meals.

The local community's own educational tasks also include transporting five- and six-year-old children to the nearest public kindergarten, preschool department or other form of preschool education, non-public kindergarten (referred to in Art. 17 sec. 1 of the Act on financing educational tasks), preschool department in a non-public primary school (referred to in Art. 19 sec. 1 of the Act on financing educational tasks), or another non-public form of preschool education (referred to in Art. 21 sec. 1 of the Act on financing educational tasks), in which the local community provides children with the conditions for meeting this obligation and for exercising the right to benefit from preschool education.

The obligation of the local community is connected with the child's living more than 3 km away from the appropriate preschool education institution (currently this issue is regulated by Art. 32 sec. 5 of the Education Law Act).

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<sup>16</sup> D. Kurzyna-Chmiel, *Education...*, p. 109

<sup>17</sup> See: Judgment by the Provincial Administrative Court in Wrocław of 18.07.2007, File Ref. IV SA/Wr 213/07, Judgment by the Provincial Administrative Court in Poznań of 21.03.2018, File Ref. I SA/Po 67/18.

<sup>18</sup> Journal of Laws of 2016, item 1985.

The enlarged composition of the judges of the Supreme Administrative Court clearly ruled on the location of the collection points that must be established in a manner that takes into account the principle of social justice<sup>19</sup>. According to the court, “the obligation expressed in Art. 17 sec. 3 point 1 of the Educational Law Act to provide free transport and care during the transport of students may be performed by the local community by designating spots from which students are transported to school which are not further from the students’ homes than it is provided for in Art. 17 sec. 2”<sup>20</sup>. It is worth noting that the parent’s right to choose the institution where the child is undergoing preschool education is not tantamount to the right to demand that the local community will provide transport or reimbursement of travel costs, if they have chosen an institution other than the nearest one, which is located more than 3 kilometres away from the child’s home. The obligation to deliver or reimburse costs applies only to the nearest kindergarten. The implementation of the principle of social justice is also a statutory regulation that defines the privileged position of disabled children in the area of transport organisation. According to Art. 32 sec. 6. of the Educational Law Act, the obligation of the local community is to provide disabled children aged five and six and children covered by preschool education pursuant to Art. 31 sec. 2 of this Act (i.e. having a certificate of the need for special education up to the age of 9) with free transport and care during transport to the nearest kindergarten, preschool department in a primary school, other form of preschool education or a rehabilitation and educational centre, or reimbursement of the child’s and guardian’s travel costs on the terms specified in the contract concluded between the local community head (mayor, city president) and parents, if the parents provide transport<sup>21</sup>.

It should also be emphasized that the local communities can provide free transport and care during its duration also for children who are not covered by the obligation.

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<sup>19</sup> The court’s ruling concerned the provision contained in the Act on Education System, however, due to its transfer to the Education Law Act, its operative part still remains valid.

<sup>20</sup> A Resolution by 7 Judges of the Supreme Administrative Court of 9.12. 2013, OPS 3/13, ONSA, WSA 2014, z. 3, item 34.

<sup>21</sup> For particular aspects of the implementation of the right to transport and care, compare: Order of the Supreme Administrative Court of 4.02.2014, IOSK 2614/13, LEX issue 1456; Order of the Provincial Administrative Court in Rzeszów of 29.08.2012, II SA/Rz 787/12, LEX issue 1258554; Judgment by the Provincial Administrative Court in Gdańsk of 28.09.2004, II SA/Gd 484/02, LEX issue 698738, Judgment of the Supreme Administrative Court of 14.04. 2005, OSK 1909/04, LEX issue 169352; Judgment by the Provincial Administrative Court of 5.03.2009, I OSK 1218/08, LEX issue 594965, Judgment by the Provincial Administrative Court in Gliwice of 9.07.2019, III SA/Gl 430/19. LEX issue 2706439.

## **Types of pre-school education institutions**

As indicated in the introduction to the article, preschool education in our country is conducted in several types of institutions. The most popular of them are state-run and private kindergartens. The first group are most often run by local communities. However, they can also be run by non-public entities, e.g. associations or foundations.

Pursuant to Art. 13 sec. 1 of the Education Law Act, a public kindergarten:

- implements preschool education programs covering the core curriculum of preschool education,
- provides free education, upbringing and care during the time determined by the governing body, not shorter than 5 hours a day,
- recruits children on the basis of the principle of universal availability,
- employs qualified teachers.

Non-public kindergarten:

- implements preschool education programs covering the core curriculum of preschool education,
- employs teachers with qualifications specified for teachers in public kindergartens (Art. 13 sec. 6 of the Education Law Act).

Non-public kindergartens may be established and run by natural and legal persons, most often an association or a foundation. However, only state-owned and communal bodies may establish and run public institutions. What is worth emphasizing, pedagogical qualifications are required only from teachers, not from the owner. One of the main requirements during the procedure of establishing a non-public kindergarten is the necessity to obtain an entry in the records kept by a local government unit which is obliged to run appropriate types of public schools and institutions. In the relations of educational institutions with local communities, it is also very important that it is the local communities that provide a subsidy for running kindergartens, which should be correctly calculated by them<sup>22</sup>.

As for additional forms in which preschool education may take place, there are still preschool departments in public and private primary schools. In order to implement the postulate of increasing the availability of preschool education, from 1 January 2008, the so-called other forms of preschool education were introduced<sup>23</sup>. These include:

- preschool education complexes where classes may be conducted only on certain working days of the week,
- kindergarten units where classes may be conducted on all working days of the week.

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<sup>22</sup> See: Judgment by the Administrative Court in Białystok, I ACa 568/18 LEX issue 2630447.

<sup>23</sup> Act amending the Act on the Education System of 7.09. 2007 (Journal of Laws, No. 181, item 1292).

Other forms of preschool education may be public, run by local communities or other legal / natural persons or non-public run by legal entities (other than local government units)<sup>24</sup>. Public forms provide free education, upbringing and care for the period of time determined by the governing body, and they also implement a preschool education program covering the core curriculum.

Communal forms of preschool education recruit children based on the principle of universal availability<sup>25</sup>. They are unique and complementary to kindergartens and preschool departments, as they can be created only in cases justified by demographic and geographical conditions. Other non-public forms of preschool education may be organized similarly to non-public kindergartens by natural and legal persons. However, they are not generally available, but just like public forms, they implement the core curriculum of preschool education and employ qualified teachers, although their employment does not have to be based on the Teacher's Charter Act<sup>26</sup>, unlike in the case of communal institutions.

Both in the preschool education complex and in the kindergarten unit, classes are conducted throughout the school year, with the exception of breaks determined by the governing body. However, unlike the kindergarten units, complexes operate only on certain days of the week. The core curriculum of preschool education is implemented there, and teachers should have the qualifications required by law. The condition for their creation is that the governing authority receives a positive opinion from the competent state sanitary inspector and the district (municipal) commander of the State Fire Service. The governing authority determines, among other things, the name, daily number of hours of instruction, goals and tasks of the kindergarten unit or preschool education complex, and ways of their implementation. As far as preschool education complexes are concerned, the governing authority also specifies the days of the week on which classes are conducted. They are held in groups of 3 to 25 children. Pursuant to Art. 7 of the regulation of 28 August 2018 on the types of other forms of preschool education, this kindergarten unit or preschool education complex covers no more than 25 children, and classes are conducted in groups of 3 to 25 children. The minimum daily number of

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<sup>24</sup> Regulation of the Minister of National Education of 28.08. 2017 on the types of other forms of pre-school education, the conditions for forming and organizing these forms and the way they operate (Journal of Laws of 2017, item 1657).

<sup>25</sup> The classes conducted in other forms of pre-school education belonging to local communities are conducted by teachers with qualifications required for kindergarten teachers, who are employed by the head of the kindergarten or primary school run by the local community. Within the meaning of the provisions of the labour law, a point and a preschool education group are not an employer with respect to their teachers. The entity employing teachers in communal institutions is the principal of a primary school or kindergarten.

<sup>26</sup> The Act of 26.01.1982 The Teacher's charter (Journal of Laws of 2017, item 1189).

hours of instruction, upbringing and care provided in a unit or complex is 3 hours, and the minimum weekly number of hours for these classes is:

- in a group of 3 to 12 children – 12 hours;
- in a group of 13 to 16 children – 16 hours;
- in a group of 17 to 20 children – 20 hours;
- in a group of 21 to 25 children – 25 hours.

The main criterion that distinguishes these alternative forms of preschool education is the frequency of classes conducted in them. It is necessary to clearly emphasize the need to adjust the complex's or unit's opening times to local needs and possibilities, the size of the group and parents' expectations, as well as the obligations resulting from the implementation of the core curriculum for preschool education. It has to be said explicitly that these forms have significantly spread preschool education in our country<sup>27</sup>. It is also attractive that parents of children attending the classes or other adult members of their families authorized by their parents can participate in the activities conducted at the kindergarten unit or preschool education complex. Alternative forms of preschool education are, alongside kindergartens and preschool departments in primary schools, institutions which also provide the possibility to fulfil the obligation of compulsory one-year preschool preparation at the age of six. They should be treated as a supplement to the rich educational, care and upbringing offer of kindergartens.

## **Recruitment procedure for public preschool education institutions**

In order to implement the principle of universal availability of preschool education, the legislator has been taking intensive legislative steps for years<sup>28</sup>. First of all, it should be pointed out in this respect that a new chapter 2a entitled "Admission to public kindergartens, other public forms of preschool education, public schools and public institutions" was added to the Act on the Education System as a result of its amendment of 6 December 2013<sup>29</sup>. Currently, these regulations are included in Chapter 6 of the Education Law Act. A compulsory recruitment procedure with an appeal procedure and proceedings in an administrative court has been clearly introduced here. The rules for conducting recruitment procedures for local government institutions have been

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<sup>27</sup> J. Kielan, *Organization and Functioning of Other Forms of Pre-School*, Warsaw 2011, p. 3–5.

<sup>28</sup> See: Judgment by Provincial Administrative Court in Gliwice of 14.11.2019 III SA/GI 834/19, LEX issue 2750627.

<sup>29</sup> The Act of 6.12.2013 amending the Act on the Education System and Some Other Acts (Journal of Laws of 2014, item 7).

prepared on the basis of the provisions of the Education Law Act. Pursuant to Art. 131 sec. 1, children residing in the area of the particular local community are admitted to a kindergarten, preschool department in a public primary school or another public form of preschool education. If the number of candidates exceeds the number of places available, the following statutory criteria are taken into account at the first stage of the recruitment procedure:

- the candidate's numerous family,
- candidate's disability,
- disability of one of the candidate's parents,
- disability of both parents of the candidate,
- disability of the candidate's siblings,
- a candidate being in a single-parent family,
- the candidate's placement with a foster family.

The above criteria are taken into consideration together and are of equal weight. In the event of the occurrence of equivalent results obtained in the first stage of the recruitment procedure (or if the kindergarten still has vacancies after this stage), the local community council is authorized to set additional criteria taken into account in the second stage, which can be defined by the local community. The legislator no longer indicates them, noting only in Art. 131 sec. 4 of the Education Law Act, that they should serve to ensure the fullest possible fulfilment of the needs of the child and his family, especially the needs of a family in which the parents or a single parent of the candidate must reconcile professional duties with family obligations. Local social needs should also be taken into account<sup>30</sup>. One of the criteria may be the parents' income, and there shall be no more than 6 criteria in total, which may be assigned different weights by the local community. This is where the biggest legal problem of the recruitment process appears: when creating additional criteria, the local community is obliged to follow constitutional principles, especially the principle of universality, equality and social justice, and as examples show, it is not always an easy task<sup>31</sup>. For example, the analysis of the legal status does not authorize the recognition of priority of 5 and 6 year-old children as an additional recruitment criterion, although it is undoubtedly the responsibility of the local community to ensure the possibility of fulfilment of the preschool preparation obligation.

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<sup>30</sup> See: Judgment by the Supreme Administrative Court in Warsaw of 23.02.2016, File Ref. I OSK 3164/15.

<sup>31</sup> Ibid.

## Conclusions

Preschool education plays a very important role in a child's development. Benefiting from preschool care is also one of the most important educational rights of an individual. In the calendar year in which the child reaches the age of 6, there is an administrative and legal obligation of one-year preschool preparation. Earlier, that is from the age of 3, preschool education is optional. Providing the possibility of preschool care, based on the principle of universal availability, is the task of the local communities. This task is performed mainly by establishing and running the local governments' own institutions, supplementing the municipal offer by non-public institutions and their control. In order to make the recruitment process for public institutions more transparent, the legislator indicated the main criteria, and local communities should set the remaining ones in accordance with the legal system. Their very important task is also to correctly define the network of public kindergartens and preschool departments in primary schools which they run. Communes also organize free transport for eligible children and care for them during its duration. The analyses conducted was intended to present both the organizational and legal framework of preschool education, emphasizing its advantages and disadvantages, as well as the fundamental role of local communities in providing preschool care to eligible residents.

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## Summary

### The Legal and Organizational Framework of Preschool Education in Poland

**Key words:** preschool education, obligation, local communities, public tasks.

The article presents the legal and organizational framework of preschool education in Poland. Preschool education should be considered an important stage in a children's development. To meet the demand for its wider availability, the opportunity of establishing not only state-run kindergartens but also private kindergartens, other forms of preschool education and preschool sections in primary schools have been created. There are clear legal regulations of the recruitment process to state-run institutions and the fees for the care provided in them. Communes are the entities responsible for the implementation of the public task of providing preschool care for eligible children. They mainly run their educational institutions, control private institutions operating in their area and provide free transport and care for children during the journey.

## Streszczenie

### Prawno-organizacyjne ramy wychowania przedszkolnego w Polsce

**Słowa kluczowe:** wychowanie przedszkolne, obowiązek, gminy, zadania publiczne.

W artykule zostały przedstawione prawno-organizacyjne ramy wychowania przedszkolnego w Polsce. Wychowanie to należy uznać za ważny etap w rozwoju dziecka. W celu realizacji postulatu szerszej jego dostępności stworzono możliwość zakładania nie tylko przedszkoli publicznych, ale też przedszkoli niepublicznych, innych form wychowania przedszkolnego i oddziałów przedszkolnych w szkołach podstawowych. Istnieje też wyraźna regulacja prawna procesu rekrutacji do placówek publicznych i opłat za sprawowaną w nich opiekę. Podmiotami odpowiedzialnymi za realizację zadania publicznego, polegającego na zapewnieniu opieki przedszkolnej uprawnionym dzieciom, są gminy. Przede wszystkim prowadzą one publiczne placówki samorządowe, kontrolują placówki niepubliczne funkcjonujące na ich terenie oraz zapewniają bezpłatny dowóz dzieciom i opiekę podczas jego trwania.