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Special Educationalists Towards Family and Legal Issues

Most people are of the opinion that law should regulate the way children are treated by their parents and in this respect they put a low value on Polish legal system. They agree that Polish legal system of childcare and enforcing children's rights are usually delusion, and parental authority is commonly misused. Assistance (including legal help) offered by institutions established to protect children's rights is illusory and seeming. Let us imagine cases when the court and prosecutor accept a parent's fisticuffs toward the child as 'a lesson'. Here a basic question raises whether the judge or prosecutor would like to experience this lesson themselves, for example in a form of spanking or pulling. Probably they would be outraged if these methods were used towards them. A child is also a human being, dependant on other people, who cannot ignore other individuals' behaviour towards him/her. It seems that legal institutions approve of using home violence towards children, though according to the law every human being (including a child) should be treated as equal. Lack of lawyers' reactions usually results from social approval of beating and using violence towards children, which is rooted in an old rule inherited from older generations: 'better beaten than dead'. In consequence, it is very likely that adults working in courts and prosecutor's offices experienced their parents' physical violence themselves and probably have used it towards their own children. An important psychological phenomenon is that the child who is being punished physically by a close person feels not only physical pain but also negative emotions that usually cumulate and lead to frustrations and later to various retaliatory behaviours, often affecting the child's future or even adult life. (K. Walijewski 2002)

Jerzy Mellibruda claims that 'children are hurt'. He points out that the history of hurting children is long and covers 'almost the whole time of our civilisation'. In his opinion, nowadays there are some symptoms that 'our species has come to its senses on this, that is it has started to notice the harm done to children as well as the price all human kind pays for it'. Child abuse can be perceived in the aspect of culture and civilisation and the model of family functioning. Enforcing obedience and the discipline of normative models amount to hurting children. Pain and fear are supposed to bring better understanding and consolidation of the rules taught and normative behaviours expected. On the other hand, an average parent and caretaker does not want to be a villain to their own child, therefore they find plenty of arguments to justify their violence with 'the child's good'. This means that an average parent shouts, punishes, beats the child and causes other forms of pain to 'bring up the child well and provide him/her better future'. (J. Mellibruda 2002)

Family situation and legal system affect children's situation to a great extent. Children's rights are supposed to guard the child's good. Children rights (together with existing civil and family legislation) are key issues to solve problems connected with disordered relations children often live in.

Often an educationalist (particularly a special educationalist) faces various family and legal problems. A lot of legal issues and decisions seem doubtful from the pedagogical point of view. Some of these decisions show the court's lack of knowledge and understanding of pedagogical rules. The issues of Polish legal system functioning are more and more often doubted and discussed among lawyers, theoretists of law, university lecturers, social organizations, media and judges (though by very few), which brings hope for positive changes. Polish justice administration and courts have been criticised for years. Although the times of the one and only political doctrine which decided on all the rules of social life are over, the methods and ways of thinking have stayed. Marek Safian – a well-known Polish ex-judge and president of Constitutional Tribunal – claims that prosecutor's offices 'need to be renovated' as there have been over 100 decisions of the European Court of Human Rights against Poland. Professor Safian defines Polish legal system as dangerous 'from the point of view of an individual's rights and freedom'. He claims that 'it is time to change and neglect this pathogenic for Poland model'. Finally, he says that 'democracies are not equal, some need special assistance, even prosthesis, at least at the beginning'. (M. Safian 2008)

There are opinions that judges in Poland are beyond the law. 'There have been some more or less spectacular cases (...) in the environment (...) of judges and prosecutors when immunity was an obstacle to prosecute an individual'. 'The number of these cases does not allow to treat it as a margin' says dr Janusz Kochanowski, the ombudsman. (T. Terlikowski 2008)

'The interpretation of judge immunity, which is supposed to protect the judge independence from other authorities, is so broad in Poland that practically it is impossible to bring a judge on trial in any case'. The ombudsman was so much alarmed with the range of judge immunity that in 2007 he sent Bronisław Komorowski, the Parliamentary Speaker, a motion to discuss its use.

In social discussions it has been stressed that judges often play the role of 'a caste of Platonic guardians of morality' and want to arrange the world order according to their measures. They are often described as 'the highest priests of democracy' and 'sacred judge office'. Social reactions and conclusions to this type of perceiving the judge role are straightforward – an attempt to play the role of an omniscient teacher of morality means quitting the role of a judge. In the contemporary democratic world a society has the right to discuss and reform the functioning of the social and professional group which is supposed to serve a society, but in reality it grows beyond and gives their opinions from a pedestal like monarchs, who at least had the theory of 'God-anointed kings' to justify their infallibility. Robert H. Bork, an American lawyer claims that 'when having uncontrollable authority most individuals, even those in judge gowns will abuse it. What is essential and symptomatic, judges (as opposed to politicians) cannot be verified by a society.' As a closed caste, evaluated or controlled by nobody, which protects their interests openly, it may become a threat to democracy' says Tomasz P. Terlikowski. (T. Terlikowski 2008)

It is not a separated opinion in discussions on Polish jurisdiction. Ryszard Makarowski in his book 'Manipulations in criminal proceeding' reveals what happens behind the scenes. The author was inspired to write the book by one of the greatest Polish professors of criminal law who lecturing on proceedings in the courts of first instance said that 'God's and common court's decisions are inscrutable'. The author presents very interesting data on how children, youth and adults understand justice and perceive court proceeding. The author also discusses the issue what a lawyer is like and what he/she should be like. (R. Makarowski 2006)

The discussion on the border between resocialization and special pedagogy for penal institutions was

initiated by Sławomir Przybyliński. Describing multidimensionality of penitentiary reality he leaves plenty place to analyse whether these institutions have any educational values (which the society, including pedagogical environments, expects) or whether the reality of their functioning is completely different – antieducational and socially dangerous, and definitely more demoralizing for delinquents. Prison subcultures (whose existence everybody is aware of) do not help the process of resocialization and education. Special conditions of isolation have their specific dimension affecting the prisoner's life. Apart from official regulations there is a specific prison code connected with so called 'the second prison life' and the hierarchic authority in informal groups. The author discusses sensitive issues of negative consequences of isolation, multidimensionality of disorders and mental disorders themselves as a result of isolation. Even a general review of the above issues makes an educationalist certain that individuals leaving a penal institution need to undergo a therapy, probably a longer and more intensive one than before being sent to the institution. A proof of this is the phenomenon of relapse into crime and adaptative difficulties after leaving prison. The issue of a prisoner's theoretical correction receives a completely new context. One can draw a conclusion that this type of isolation is a specific form of criminal education and it strengthens bad qualities instead of reducing them or causing a moral revival. (S. Przybyliński 2006)

Mechanisms of philosophy of law are well known. The main point is to eliminate social unrest and retaliatory behaviours that society members could have a sense of safety, justice and realization of established social and legal norms. In reality, imprisonment has a retaliatory qualities and social isolation gives the society an illusory sense of eliminating a threat. A stay in a penal institution itself is supposed to make an individual fear of being sent there again, which does not always go with human thinking processes, since an individual fears unknown situations, happening for the first time. Therefore, as he/she knows the relations in prison sometimes better than the ones in the outer world, he/she does not fear another imprisonment, because life there turns out to be easier and more stable than outside. This type of punishment proves to be little effective or even harmful from the pedagogical point of view. It reminds of old practices to chain the mentally ill in dungeons so that they could not disturb a social and legal order. Unfortunately, humankind has not found more effective and truly educational methods of punishment for crimes than isolation in prison so far (except for a suspended sentence, which is supposed to give a sense of possible prison punishment and therefore prevent from other criminal actions)

Special educationalists inevitably come across complex issues of family, civil and criminal law represented by the police, prosecutors, courts and even penal institutions. They work with individuals who have legal problems of various type, which involve a multiplicity of issues connected with special pedagogy, as its goal is to improve interpersonal relations so that pathological behaviours can be eliminated. Since police, courts and prisons are not free from some social stereotypes, educationalists often face dilemmas and situations when their pedagogical knowledge clashes with the reality of legal actions taken by the above institutions of the legal system.

As there are numerous stereotypes it is essential to discuss and analyse them (best in a written form) and also to organize educational and informative campaigns. The campaign organized by the Children's Ombudsman caled 'Love. Don't hurt. Help' (unfortunately the campaign refers to children under 3 as if older ones do not have the same problems) gave exact instructions: :

- be tender

- look after
- react when it is crying
- feed well
- protect from danger
- don't leave unattended
- don't neglect
- don't be indifferent
- don't shake
- don't beat

The campaign draws social attention to the fact that 'any shaking, pushing or beating may damage an infant's brain permanently!'. It also warns that 'you should never lose self-control when a child is crying . You must remember that all infants may become victims of shaking!'. The campaign is limited to children under 3 years. The ombudsman argues that 'Violence experienced in childhood leaves traces for the whole life. The first 3 years of life are the most crucial period in human development. Incorrect stimulation of a child's development in this period leads to disorders of cognitive and social functions, learning difficulties and hyperactivity'.

Research shows that

- 43 -70% victims of violence have symptoms of traumatic stress syndrome,
- 70% children after 3 years of abuse show retardation in psychomotor development
- 90% violence doers experienced violence in childhood

The authors of the campaign draw attention to the fact that all caretakers, social workers and all citizens have a legal and moral obligation to report child abuse to the police, prosecutor's office or family court. The Family Violence Act (Legislation Gazette 2005 no 180 item 1493 article 3) orders to : " protect from further hurting by making it impossible for the violence doer to live with the family or contact with the victim'. Isolating a violence doer from the victim is very complex in case of children since most often the aggressor is a parent. Moreover, the police/courts react only in drastic situations, whereas beating with hands ('spanking'), shaking, covering the mouth when a beaten child is crying, isolating from environment, not reacting to a child crying are ignored by the courts , which strengthens social approval of using violence towards children. The majority of Polish society still thinks that parents have the right to use spanking 'to teach a lesson'. Usually the reaction of the court to evidence of child abuse is not very prompt. The court decides to appoint a probation officer or refer the child to the Diagnostic Family Centre only in very few cases. Definitely, Polish courts have no interest in most cases of child abuse.

The social campaign against child abuse was joined by mass media, which hopefully should be able to influence Poles and encourage them to stop using spansks. POLSKA THE TIMES in Family Magazine section of 2 February 2008 published an article titled " Instead of spansks – discipline does not equal violence' (A. Błaszkiwicz 2008). Let us hope there will be more and more articles on this issue. It is worth reminding that in 2005 Polish Parliament rejected amendments proposed by Ms Magdalena Środa (at that time Polish commissioner for equal status of men and women) . The majority of MP-s thought that a ban on punishment violating young people's dignity was a diversion towards the rules of family life. There appeared opinions that a child would be entitled to report parents for a spank, who would be sent to prison for that. The Bill was called

(by Tadeusz Cymański, an MP) 'a quiet attempt to decompose and disassemble a family'. Another MP, Andrzej Mańka suggested that everybody was spanked and thanks to them now they are not in prison but in Polish Parliament. There was also an argument that after introducing similar acts in Sweden a family became a kind of relict, the number of divorces increased dramatically, and a big number of young Swedes looked for psychological and psychiatric aid. No wonder judges, prosecutors and police officers do not react to parental violence. Probably they also experienced 'educational spanks' from their parents and yet became decent, educated citizens doing socially important jobs.

Nobody's Children Foundation, which is running a national campaign called 'See-Hear-Say', points out that most children abused are under 10 since they cannot defend themselves or do not know how to get help. Research done in Poland revealed that :

- 50% Poles think spanks should not be used, but sometimes there is no other option
- 13% think this method can be used if parents find it effective
- almost 60% respondents think corporal punishment should be banned
- 20% find it justified if a stranger, someone from outside a family , intervenes when they know a child is spanked by a parent.

19 countries have a complete ban on corporal punishment. In 2007 it was approved by Holland, Portugal and New Zealand. Nowadays, the Czech Republic, Estonia , Brazil and other states are working on legal acts to introduce the ban. However, Poland still discusses whether to beat legally or not to beat (which sounds like Polish edition of Hamlet's dilemma). Very few people know that:

- by spanking children we teach them that beating is a 'good and obvious' way to solve problems and disputes; it is very likely that children will apply this method in kindergarten, school, playground and then in adult life (also towards their own children);
- spanks are a sign of adults' educational powerlessness; they prove an adult's lack of emotional control, his/her emotional immaturity, inability to cope with anger;
- instead of beating children we should tidy children's and adults' affairs as we live in the same world;
- rules for children must be clear and simple; if children do not obey them, punishment must not batter children's bodily inviolability or human dignity.

When analysing family violence (often accepted if it is towards children, so parents-violators are not usually persecuted) it is worth looking at the stereotypes of gender proneness to violence. Human mentality was formed by a traditional way of socialization based on patriarchy. According to gender stereotypes historically existing for centuries (or thousands of years) a man is thought to have features and functions that stress his power, fitness, independence, pugnacity, courage, even might and domination. The association is clear – a man is a 'master and ruler'. Women are expected to be submissive, good housewives looking after children and doing housework. They are supposed to be quiet, gentle, and tender. They need a man to live and function in a society. In her book published in the 70s of 20th century J. Mitchell writes about gradual changes of women's status calling it 'the longest revolution in history' (which, to my mind, is an evolution socially, economically and culturally conditioned). The change of the traditional model of gender social roles may become a threat for the correct functioning of a family. (E. Charzyńska 2007) (however, I do not see it as obvious). Nowadays an egalitarian family model is common and due to the process of feminization of some jobs women themselves see the need of more men in these jobs; women also do prominent jobs, which in the past were men only.

However, in some families the transformation process of social and family roles may trigger conflicts or even cause breakdown of the family. Here, I see a place for a psychologist and educationalist.

There is an interesting study by Bogusław Włodawiec from the Institute of Health Psychology and Sobriety on women's aggressive behaviour. In his surveys he found out that in families with the alcohol problem:

- 13% women did heavy physical violence - beating, kicking, pulling hair, throwing objects at a person
- 29% women performed lighter physical violence - pushing, shaking, destroying objects
- 59% women declared verbal violence – swearing and using bad language
- 30% women used threats
- 0% women used sexual abuse.

The characteristic thing is that there was a high correlation between physical violence, verbal violence and imposing threats. Women's aggressive behaviour towards children had the same forms of violence. Thus, children hear as much swearing as their fathers, but they get more threats and more often suffer from lighter forms of violence.

The strongest connections are between certain forms of aggression and witnessing violence in childhood (most often towards other members of family).

The use of lighter forms of physical violence by the women surveyed correlated with their being victims of threats and violence in childhood. The use of lighter forms of physical violence was also connected with the use of verbal violence (particularly during the period of 6 months preceding the survey) by their husbands or partners. The women used threats when they heard them in childhood, witnessed verbal and sexual violence or when they were threatened during the period of 6 months before the survey.

The author of the survey associates the use of heavy forms of physical violence by the women with traumatic events of sexual violence experienced by them in childhood.

A co-addicted woman who suffered sexual violence in childhood is likely to use heavy physical violence in adult life, especially when she hears threats from her husband/partner.

The survey showed that the aggressive behaviour of the women was the result of childhood traumas (witnessing light or heavy forms of physical and verbal violence, being threatened with violence). Another factor causing the women's aggression was their sense of wrong which originated from the fact they were abused in childhood.

The third essential element was the women's subjective sense of threat caused by their husbands/partners' swearing and threatening. (B. Włodawiec 1997)

A characteristic thing is that the author of the survey did not research psychical or economical violence. Another author researched mother-daughter relations, with special focus on their mutual relations and violent behaviour. The starting point for the research was the mutual relation of two women closely related to each other – a mother and her daughter. This relation and living together may lead to a rivalry or true friendship. An aspect of being a daughter (who will take the role of a mother in the future) stays in the shadow of the pathos of Polish Mother. The author draws a conclusion, consistent with American research, that majority of adult daughters are distant to their mothers and seven out of eight women researched do not have positive experiences of being a daughter from the past. (J. Arcana 1979) (J. Ostrouch 2007)

Due to the limited form of this paper I presented only some of the most crucial issues. Family and legal issues in special pedagogy cover a lot of other aspects, including the issues of fatherhood, single fathers raising children, fathers' contacts with their children living separately, children living in uncompleted families, where

parents are often in conflict, mental disorders and addictions. All of these issues are important problems related to the areas of jurisdiction and special pedagogy which I am going to analyse in my future publications.

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