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**Author:** Anna Nowak

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## Application of Legal Knowledge in Social Pedagogy

### Abstract

In the paper a need for the use of the elements of legal sciences in social pedagogy is justified. The notion of legal knowledge and its meaning in the social pedagogue's activities is analyzed. There are presented the basic, specifically national (Polish) and international, legal acts, indicating the boundaries of the social pedagogue's professional activities. The basic functions of the law are analyzed : the guarantee, controlling and educational ones. The author claims that the mode of realizing the social pedagogue's professional role is regulated by legal norms, and the professional activity of social pedagogues is directed toward legal articles.

**Key words:** *Keywords: legal knowledge, legal articles, social pedagogy.*

Social educators J. Modrzewski , A. Nowak justify the need for applying elements of legal science in the field of the civil, family, administrative or educational law in social pedagogy, which determine the formal restrictions and possibilities of making and executing different pedagogical initiatives, being updated in the institutional and environmental dimension (J. Modrzewski, 1999, pp. 41–42, A. Nowak, 2005).

Legal knowledge is indispensable for creating the entitative circumstances of achieving objective goals in order to competently contribute to the solution of various social problems which are contained in the field of traditional and current interest of social pedagogy. Legal knowledge is a skill to use regulations in the correct way, and to either directly or indirectly interpret the binding proceeding models. As J. Utrat – Milecki remarks, it is necessary to master the techniques interpreting the law, but it is also necessary to be able to look at it from a wider

angle, know the key assumptions of the law concept, as well as, the theory of its respective branches , eg. administrative law, civil law (J. Utrat-Milecki, 1999 No. 2–3, p. 34)

Leon Petrażycki wrote about law politics, which in his opinion denotes the science about rational execution of social changes via the law as an instrument of these changes. /Quoted after A. Podgórecki, 1971, p. 444/. According to this formulation the policy of the law constitutes a concept, which indicates the need to combine legal knowledge with the knowledge about essential social mechanisms (A. Podgórecki 1998, p.179).

In social pedagogy it seems indispensable to combine the knowledge from the field of sociology, social policy, social pathology, psychology, medicine, praxeology, elements of knowledge from the field of psychotechnics and social engineering, law science (constitutional law, civil law, educational law, administrative law, family and guardianship law, penal law).

Legal knowledge may turn out to be indispensable for settling cases and problems and become the basis for granting help to other people. The first argument is important for each citizen. The second argument is important for people who, performing the job of an educator, support others and act in favour of others. Educators are faced with the necessity to refer to effective regulations – as they determine the potential and limits of their activity.

The professional activity of social educators is formalized and by performing various tasks within its confines, educators are obliged to act within the limits of the effective law and on the basis of the binding regulations. The problems of families, persons who, for various reasons eg. poverty, unemployment, homelessness, minority, addiction, disability, chronic illness, domestic violence, commitment of a prohibited act and others are not able to function independently, are complex and their solution requires knowledge of the law. These people and their families remain in various legal relationships eg. civil, administrative, penal ones, are involved in different relations, in legal relationships. Due to problems and situations, such people require support and aid and the employees supporting them must act on the basis of the law in force, referring to means of appeal suitable, useful in a given situation and admissible by the law in force.

The law in this situation may be the main premise of maintaining dignity by persons who are incapable of providing for themselves, as L. Fuller claims the law then becomes the basic condition for their dignified life (L. Fuller, 1993, pp.9–10).

The law performs the guarantee function, it determines what is allowed and what is prohibited, what power the recipients of norms have or what sort of conduct they can demand from the other party. The law indicates a certainty of how we should

behave in situations typified in legal acts and what we can expect from others and this is defined as legal positivism. It has a particular meaning in relation to the approach of the government and self-government public authorities (J. Utrat-Milecki, 1999, No. 2–3, pp. 35–36).

Pursuant to article 7 of the Constitution of the Republic of Poland the public authorities act on the basis of and within the confines of the law.

As J. Utrat-Milecki remarks, it is the real decision of the authorized authority in an individual, specific case that makes up the Law. On the basis of a decision, different disputes between the persons of law, natural persons and/or legal persons, offices are settled. This decision awards someone a specific law and is a formal basis for the functioning of the authorized executive bodies and determines thereby binding behaviour patterns (*ibid.*, pp. 37–38).

The law must fulfill the principle of justice – thus, equally treat, due to the adopted justice formula, recipients listed on the basis of legal regulations. The law regulates social relations in order to achieve goals (*ibid.*).

A modern state refers to the law in order to implement the social policy. The functioning of the state and other entities of social policy requires formation of the law, which would be suitable for carrying out the goals of this policy.

Nowadays a phenomenon of the outburst of the law can be noticed, which first of all, indicates the growth of the significance of the law as the basis of social order, and, on the other hand, the increasing range of the law interference in social life. This phenomenon is explained by the scale of state interventionism and also by the fact that in order to function efficiently a state must resort to the law as a tool of its functioning, a tool executed in different policy fields/penal policy, penitentiary policy (G. Skąpska, 1999, pp. 129–130).

In the course of the centuries, the law resided deeply in the life of societies and in the life of people, however, it seems that nowadays the power of the relationships between the law and society, the law and people is even bigger. It can also be noticed that the law in our times enters into the sphere of relationships regulated earlier by custom norms and/or religious ones, eg. matters concerning legal relationships between spouses and between parents and children.

The justification for regulations by the law is the human rights and freedoms. Pursuant to article 30 of the constitution of the Republic of Poland : “innate and inalienable human dignity constitutes the source of freedom and human and citizen rights.”

The principle of equality to the law and the principle of the same protection of rights of each person are the basic principles on which the concept of civil rights and freedoms is based. These principles are closely related to the discrimination

ban introduced by art. 32 passage 2 of the Constitution of the Republic of Poland: “no one can be discriminated in the political , social or economic life out of any reason.”

International legal acts play a special role in the protection of human rights: the Common Declaration of Human Rights (1948), the International Pact of Civil, Political Rights (1966), the International Pact of Economic, Social, Cultural Rights (1966), the Convention on the Protection of Basic Human Rights and the Basic Freedoms (1953), European Social Charter (1961), Convention on Children’s Rights (1989), Convention on the Execution of Children’s Rights and the Treaty on the European Union (1996), the European Union Treaty, the Charter of the Basic Rights of the European Union and other documents, whose audience are different social groups, eg. the handicapped, elderly persons, the unemployed, the homeless, excluded persons, refugees, minors, juvenile delinquents.

In the Polish legislation the Constitution of the Republic of Poland increases in importance, pursuant to article 2 the Republic of Poland is a democratic legal state implementing the principles of social justice. In this norm and other regulations of the 1<sup>st</sup> and 2<sup>nd</sup> chapter, the Constitution defines the rules: justice criteria, eg. the principle of each according to his need.

This principle is the basic principle of the law on social help of 2004, which defines the organizational-legal confines of the social policy in the range of social assistance. The law defines entities obliged to execute tasks of social assistance and determines the criteria and principles of granting and paying out monetary and non-monetary benefits to people who are in a difficult life situation. Diverse forms of aid for families, forms of guardianship of children such as: family counseling, family therapy, social work, provision of guardianship and education to children outside the family (in establishments and foster families). This aid is executed in the local environment by an educator, psychologist, social worker and also in guardianship-educational institutions, in foundations and associations.

Family benefits (family allowance and extra allowance and guardianship benefits) are stipulated in the act about family benefits of 2003, which regulates the acquisition conditions, right to benefits, principles of determining, granting and paying them.

The act about social employment of 2003 regulates the issues of aid to people who are socially ostracized in their social and professional reintegration.

The law regulations secure the human rights, they determine people’s status, rights and duties, guarantee (eg. social) benefits to people, stipulate means of appeal, which may be necessary in a given situation.

One of the most important and useful issues in the work of the educator are the issues of the capacity to legal transactions, as this capacity conditions the possibility to acquire rights and contract liabilities by legal entities and bringing about legal consequences by carried out legal actions. In case of a lack of or a limited capacity to legal transactions, a statutory representative is appointed, who represents the person before authorities and institutions.

The legal regulation of marital and family relations covers their external aspect. It deals with the origin of marriage, legal effects resulting thereof (rights and duties, including property issues, causes and consequences of marriage dissolution, cessation of marriage) it regulates the issues from the range of relations between parents and children, payment of alimony, custody and guardianship. The legislator in the act – family and guardianship code carefully enters into the sphere of personal relations and parental authority.

Every educator in a situation of threat or encroachment upon personal property of the child (his/her life, health, basic needs) should be a spokesman for his/her rights and should take up a suitable intervention for the protection of the child's welfare, that is why it is indispensable to possess legal knowledge. It should be added that according to article 572 of the code of civil proceedings everyone who is conscious of an event which justifies instituting proceedings by the guardianship court should *ex officio* notify this court.

Situations pose a lot of difficulties to educators, in which it is necessary to refer to legal instruments in order to interfere in the relations between spouses, parents and children. One should at that time remember that by referring to the instruments which are provided for in the act, as M. Andrzejewski remarks, not to cause evil, insofar there is a possibility to solve the problem without any law interference, not refer to legal instruments, but to extralegal measures (M. Andrzejewski, 1999).

An educator should get acquainted with the educational legislation – act about the educational system and the executory regulations to it, which determine the principles according to which the educational system functions, define its formal limitations and possibilities of taking up and carrying out educational initiatives and the Teacher's Charter the competence and qualifications of teachers.

The law is nowadays also a basic mechanism for controlling and applying legal sanctions. The execution of penalties, punitive measures, educational and corrective measures, entails the interference in the sphere of the rights and the freedoms of the entity, must be regulated according to the law. The formalized control functions on the basis of the law in force (penal code, the executory penal code, the act about proceedings in juvenile cases and other legal acts) and according to it is exercised

by prosecution agencies, judiciary agencies, inland revenues and customhouses and also institutions: schools, penal institutions, banks and others. The aim here is to enforce behaviour in accordance with the legal rules. Not complying with the legal norms gives rise to a threat of applying a legal sanction – hardship or repression in the form of a state constraint. The law also determined the admissible measures and conditions of taking up rehabilitative impingement in an open society and in penal institutions and rehabilitative institutions.

The mode of executing the penalty in the penitentiary system, the organization principles of rehabilitative impingement in reformatories, shelters for juveniles, youth educational centres and socio-therapy centres is determined by the rules of the law. The legal status of the convicted or the juvenile is determined by the rights and duties provided for by the law to which they are entitled. Teachers and educators should get acquainted with the legal regulations concerning basic principles of responsibility of juveniles in connection with depravity and/or punishable acts and with the possibilities of legal reaction to juveniles (classical and alternative ones).

In order to increase the efficiency of counteracting violence in the family and initiating and supporting actions which consist in increasing the social consciousness in the scope of causes and consequences of violence in the family the Sejm (the Polish parliament) passed an act in 2005 which regulates the tasks in the range of counteracting violence in the family, the principles of proceedings towards victims and perpetrators of violence

In the period of social change, the foundations for the functioning of a civic society were laid, which proves – according to many authors – that the model of social strategy evolves towards solutions based on the multientitative structure of social institutions and the partnership of the state and civic organizations in supplying social services. The public benefit activity and voluntary service act of 2003 regulates the principles of conducting public benefit activity (in the range of social aid, employment policy, education, health protection, environment protection, family policy and others) via non-governmental organizations and using this activity by organs of public administration in order to carry out public tasks, obtaining the status of a public benefit organization by non-governmental organizations and the principles of supervising the public benefit activity. The act also contains regulations concerning the terms and conditions of executing benefits by employees of the voluntary service and use of these benefits.

For social educators the law also has an essential meaning – it defines their rights, duties, and qualifications, facilitates the performance of their professional role. It may, however, be an obstacle in taking educational actions and initiatives in a social environment and in institutions.

The legal system concerns educators in two ways, in an entitative aspect the legal norms regulate the mode of performing their professional role, on the other hand, in an objective aspect, their professional activity is directed to the rules of the law. The law secures the functioning of institutions and relief services, determines the confines of their activity and formal restrictions.

The legislator in the transformation period is obliged to create a law which in its content would respect the basic human freedoms and rights and would guarantee the entity to make use of them, and, at the same time, would also respect such values as: legal clarity, as well as legal reliability and safety. (S. Wronkowska, 1995, p. 83).

Legal knowledge should be popularized by an adequate selection of modes of passing on information about the law so that, on the one hand, they would cover the widest circles of society, on the other hand, would maintain an invariable semantic content bestowed upon them by the norm-giver. The issue is to make the members of society well-informed about the rules of the law, which is indispensable due to the social roles they perform and it also gives them the possibility to easily supplement knowledge in a situation when it becomes necessary (M. Gerula, 1978, p. 27).

The law also fulfills an educational role, its adequate application can shape and change the attitudes of the citizens – it can make them realize that the law is effective in society.

As research shows, respect for the law depends on its usefulness. Legal knowledge is useful for social educators, it is the condition of sine qua non for their functioning in accordance with the law.

It can be ascertained that ignorance of the law is detrimental, Ignorantia Iuris Nocet, thus one should take cognizance of it in the indispensable range.

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