

Stanisław Leszek Stadniczeńko

University of Economics and Human Sciences in Warsaw [sl.stadniczenko@o2.pl]

Court probation – a useful function in the service for children.

Abstract: The article discusses issues related to the evolution of probation as a service to the child, considering it a variable social construct determined by various discourses. The premise of this claim is the phenomenological assumption that life is complex, undefined and based on interaction between people. "Society [...] is a symbolic creation made up of concepts, their meanings and language, constantly changing through human activity, limiting and enabling it" (Parton, 2003, p. 5).

The aspects of the professionalization of the probation officer's work in the service for children are presented in relation to the complex current reality, i.e. "post", post-truth, post-politics, post-secularism, post-humanism and post-modernism (post-modernity). The terminology reflects social change in relation to the other concepts considered. The literature deals with very widely raised issues that are related to the crisis of reality. It should be noted that it was the concept of post-truth that paved the way for the world of politics and political debate, in order to achieve triumph by being recognized as the word of the year in 2016 by the editors of the Oxford Dictionary. The matter is very complex, because the mentioned "post" replaces previous concepts with a different perception of the world and we are not sure about the direction of these changes. The inclusion of this issue in the probation officers' work indicates their entanglement with the current reality in which they function. So it is only a signal to understand the complexity of the probation officers' work and their function in a difficult reality. All complex environmental factors influence the way we perceive care, provision probation and other concepts.

Relationships are considered to be at the core of the constructionist concept of probation as well as the adopted reflectiveness, i.e. a direct transition from knowledge to action.

The main theme of the considerations is that the legal regulations contained in the principles of the Convention on the Rights of the Child occupy an extremely important place here.

The term "human person" is very important, especially since it is associated with two fundamental – for thinking about human rights – categories: the dignity and value of the human person as essential properties of humanity and human subjectivity.

Reflection on the service for children is by its very nature of great importance in terms of the creation of good, bringing the rights of the child and the family into effect. The law is what governs actions and human relations, hence the rule and measure of action organizing them to the purpose.

The author draws attention to the relationship between the proclaimed and protected rights and the welfare of children and extremely complex social and legal issues. The understanding of the law and human rights as the basis of service thus becomes the foundation of the probation function. It seems that broadening the legal understanding to include the law as a relationship to the due state of affairs to include a philosophical understanding and the law as a personal affinity may explain the phenomenon of the rights of the child.

The 60th anniversary of the Declaration of the Rights of the Child (UN 1959) and the 30th anniversary of the establishment of the Convention on the Rights of the Child (UN 1989), as well as the 100th anniversary of the probation in Poland, which evaluated over that time from the model of socio-professional probation to the professional-social one carrying out tasks of an educational and social rehabilitation, prevention, diagnostics, control nature, related to the execution of court judgments and bringing the law into effect in the environment of activity. The study deals with the beginnings of the regulation of probation and its development as well as the social role of probation officers in the context of responsibility and participation in creating order, social and legal order in society, bringing the rights of the child into effect. The analysis was carried out in the scope of realistic understanding of human being as a person, hence it was embedded in the area of human rights protection, including the rights of the child.

It was considered necessary to take into account the context of philosophical anthropology, which refers to the establishment of human rights to understand man as a person, as this theory best corresponds to common sense cognition. At the same time, the organic relationship between human rights and the objective order of human nature has been taken into account, which is manifested not only in common sense cognition, but also in the historical development of this issue and in philosophical and anthropological reflection.

Keywords: Probation officer, service for children, human rights, probation officer's work.

Introduction

The issues covered in the title cannot be summarized in a modest size of the text. It is not the intention of the author to refer to numerous aspects of the issues of court probation having an extremely wide and complex scope.

The Polish system of court probation in the service for the child in the strict sense, although not uniform in structure, occurred in the early 20th century. It reflected a firm belief in the unity of law, morality, the color of ethics, the social and historical process, the approach to childhood and the vision of legislation. The idea of Family Courts began to mature (1914 – the development of judicial and extrajudicial criteria of measures aimed at children. On 7 February 1919 in

Poland, the Head of State Józef Piłsudski signed a decree on the establishment of special magistrate's juvenile courts (Journal of Laws No. 14, item 171) on the basis of which the Minister of Justice issued on 26 July 1919 the Regulation on the Organization of Juvenile Courts and their Ancillary Apparatus. On the basis of these regulations, the Juvenile Courts in Warsaw, Łódź and Lublin began to operate on 1 September 1919. In the same regulation of the Minister of Justice, the issue of so-called social workers was regulated.

The institution of a probation officer for juveniles was established by the Regulation of the Minister of Justice of 25 June 1929 (Journal of Laws No. 47, item 387) on transforming the institution of social (court) guardians into probation officers for juveniles at Municipal Courts and Juvenile Courts. According to § 1 of the same regulation, "permanent court guardians, as provided for by the Decree of 7 February 1919 on the establishment of Juvenile Courts, become, as of 1 July 1929, probation officers for juveniles at Municipal Courts, and in the case of the establishment of separate Juvenile Courts at the District Courts, probation officers for juveniles will be appointed there". It was also a professional staff enacting the professional model of court probation. In 1919, a Codification Committee was set up to draw up a criminal codification, including rules on how to deal with juveniles. However, it was not until the Presidential Decree of 19 March 1928 the Code of Criminal Procedure was introduced (Journal of Laws No. 38, item 348), and the Regulation dated 11 July 1932 – Penal Code, Journal of Laws No. 60, item 571) and the Misdemeanor Law (Journal of Laws No. 60, item 572), which contained all the criminal provisions concerning juvenile offenders, which had been in force until the establishment of the new act in 1982. It should be noted that the history of judicial measures for the protection of children and young people in Poland provided for in the broadly understood civil law is much shorter and poorer than the history of measures contained in the criminal legislation.

The Criminal Code of 1932 was one of the most modern criminal laws in Europe, it was a precursor both during its implementation and until the end of its term, i.e. 31 December 1969. It was viewed as legislation of extremely high quality. In the interwar period, the partitioning states did not replace the legislation with their own family law. We are interested in the family law introduced by the decree of 27 August 2009 (Journal of Laws No. 6, item 52), which defines the means of interfering with parental authority and adoption, as well as in the guardianship law contained in the decree of 14 May 1946 (Journal of Laws No. 20, item 130). Further changes took place in 1950 with the introduction of the Family Code Act of 27 April 1950 (Journal of Laws No. 34, item 308). The right to interfere with parental authority concerned not only cases of parents' culpable neglect of their duties towards the child, but also when the child's well-being was endangered by objective care and educational difficulties (Family and Guardianship Code of 25 February 1964, Journal of Laws No. 9, item 59, as amended). The 1975 amendment to this code has significantly expanded the forms of prevention of the

threat to child welfare. A system of preventive and social rehabilitation measures was created. The aim of the changes was, among other things, to create more realistic ways of influencing the educational situation of juveniles through the definiteness of court orders, systematic interactions, control of the fulfillment of obligations that could be imposed on both parents and juveniles from that time on. It should be added that I am writing about changes in the normative system and not about the history of the guardianship and juvenile justice system.

Judicial statistics reported an increasing number of cases of court intervention in family life by limiting parental authority of parents who did not properly perform their caring and educational functions and an increase in the number of juveniles made subject to judicial measures.

As part of the codification reform of the system of Polish legislation made in 1978, by modifying the existing Juvenile Courts, the Family and Juvenile Divisions of the District Courts called Family Courts were created. The family and juvenile courts were obliged to take various measures to protect the welfare of the child, his/her proper socialization by helping the family to fulfill its functions. The humanization process and international law also had an impact on the changes taking place in dealing with juveniles. Since then, probation officers have functioned within the structures of family courts – common courts, and those created in organizational and legal conditions. The family judiciary started functioning on 1 January 1978 by order of the Minister of Justice (Journal of Laws of Min. of Justice No. 6, item 25; Journal of Laws of 1982, No. 35, item 228 as amended), placing emphasis mainly on protection and assistance for the family as the basic institution of raising a child in order to prevent social maladjustment of children (Marek, 1990–1991, No. 18, pp. 13–18). There are contradictions in the provisions on probation. Some of them emphasize its educational and social rehabilitation nature (1992, No. 24, item 101, as amended), and in others, the main emphasis is on control and provision elements (1986, No. 43, item 212).

An analysis of Polish normative regulations indicates that it was not until 1985 that court probation officers were recognized as a separate professional group and ceased to be defined as an auxiliary court body (1985, No. 31, item 137). Under the Act on the System of Common Courts, probation officers began to enjoy certain degree of independence in their work, because the supervision of a family judge cannot enter the sphere of pedagogical supervision (Journal of Laws of Min. of Justice of 1983, No. 3, item 16), and they were bound by the responsibility for the course and organization of the enforcement proceedings. The family probation officer requests that cases in which it is necessary for the court to take a stance in relation to the course of the educational and socialization process be referred to the enforcement hearing. Probation officers were entitled to participate in such meetings (1987, No. 38, item 218). However, the changes made in the eighties of the previous century to the regulations on probation did not meet the expectations of the probation officers themselves and did not

take into account the transformation of the probation model into a professional-social one, which many researchers postulated, as discussed at the conference of professional probation officers in 1981. The demands for changes concerned the transition to probation being a substantive and autonomous division of the judiciary, and the transformation of the probation of control and repression nature into an educational probation (Sawicka, 1985, pp. 101–116) and the wider use of supervision by probation officers during the preparatory proceedings, as pointed out by K. Grześkowiak (Grześkowiak, 1976, pp. 37–53). K. Gromek points out that the 1986 Regulation on Court Probation Officers was widely criticized because it did not clearly regulate the status of probation officers, and also imprecisely defined the duties and powers of probation officers, and did not formulate the reasons for suspending or dismissing probation officers (Gromek, 1988, pp. 117–126).

The significance and role of court probation officers in the Polish legal system and the importance of tasks performed by court probation officers for the benefit of civil society was highlighted by the legislator on 27 July 2001 in the Act on Court Probation Officers. This act creates a kind of “probation constitution” defining the organizational structure of the court probation service situated within the structure of common courts, the rights and duties of probation officers, their promotion path and the organization and competence of the probation officers’ self-government.

It is important to underline that the concept of the legal protection of the child has evolved over a period of more than a century, from viewing the rights of the child solely as a right to specific protection and care by adults to recognizing that the child, as a human being, has full rights and freedoms, which it enjoys according to his/her level of maturity and independence. Speaking of the rights of the child as an issue within the concept of human rights, we point to the individual rights of the human child that should be protected by the state and the possibilities of enforcing these rights. With the entry into force of the Convention on the Rights of the Child and other agreements ratified by Poland, the understanding of the family and the rights of the child creates a radically different basis from what was behind the creation of the Family and Guardianship Code as part of civil law, where instead of codified family law principles, there are civil law principles in family law. The foundations of civil law should remain in the service of child welfare and the catalog of child rights and family rights. In family law, legalism, formalism and equivalence of benefits cannot dominate because it is a classic civil law relationship. This attitude is a denial of the child’s welfare. Legitimizing a harmful attitude based on legalism and formalism denies, among other things, the right of a child to express his/her opinion, objectifies them in their relations with parents and exempts parents from the obligation to deepen positive relations with children. All the foundations of civil law must remain secondary to the good of the child and be replaced by concepts such as: ensuring the child’s existence and development, love, acceptance and security.

In the previous year (on 31 May 2019) a draft on court probation service was presented for public consultation, changing the professional status of court probation officers from substantive employees performing activities provided for by law to quasi official and judicial service. There is no doubt that the manner in which the probation officer works depends on the function and role adopted by the legislator and on the expectations formulated by superiors towards him/her.

I

Reflections from the analyses are directed especially to people who are guided in their profession by pedagogical and legal activities, so-called ombudsmen for children's affairs and rights, people who know the content of legal norms contained in the Convention on the Rights of the Child and other acts concerning family and children and literature. The search for the reasons for the non-respect of children's rights, incorrect understanding of childhood, should be seen in both objective and subjective matters such as worldview, ideology, politics and culture. We should also include here the philosophy of child, childhood and upbringing.

A mistake in thinking that it is enough to write down specific goals, slogans, declare rights and values, and "everything will solve itself, it will happen by itself" rebounds on the situation of the child. Such an approach to children affairs leads to the situation in which after the establishment of legal acts, ratification, one forgets, does not notice the facts of their violation. This is related to the approach to the child, the mentality of adults. L. Pytka (Pytka, 2002, pp. 14–15) in the article *Urok i piekło dzieciństwa* [The charm and hell of a childhood] stated that "Different and ambivalent attitudes of adults towards children as a socio-demographic category, towards children as potential adults, towards children as persons, subjects and autonomous human entities are diverse and ambivalent. These attitudes range from admiration and worship (Korczak's attitude) to indifference to their fate and existential problems, or even express deep hostility towards these «spongers», unproductive beings, who [...] hamper their parents' professional careers, are an unnecessary burden and make life miserable for adults, spoiling their strategic life plans (vide: Herod's attitude) [...]. However, many children feel that the adult world is full of mendacity and hypocrisy, and the most tragic victims of adult games are children – as they are the most vulnerable. Take, for example, children – first victims of war, ethnic persecution, victims of epidemics and illnesses, including AIDS, victims of hunger and economic malaise, victims of terror and kidnapping, children exploited by adults in the productive, sexual, violent, educational, ideological, fanatic sense, etc. In other words, there is a real far-reaching carelessness or even aversion of the adult world to children and young people as immature and dependent beings".

The reference to the understanding of the child as a person when addressing the issues of children's rights and their protection is a prerequisite for any progress in this field; there is a gap between thinking and acting both in theory and in practice.

“Child welfare”, a key category of family law and dealing with juveniles, is a concept so ambiguous that many of us will probably agree with M. Łopatkowa's opinion that “every harm to the child will fit in” (Łopatkowa 1992, p. 97).

The literature on the subject as well as the observation of everyday life leads to the statement that there are numerous extremes in the way the child is perceived, including the child as a subject, the child as a thing, the child as an object or the child as a deity. Understanding a person reassures us that a child is not something you can own or get rid of in order to solve your problems. The child is undoubtedly a human being in the developmental phase and his/her development is the most fascinating process in our visible world, in which transformation takes place.

There is now undoubtedly an awareness that the protection of children's rights is part of the protection of human rights. A. Łopatka argues that the provisions of universal declarations, covenants and conventions contain a progressively increasing set of norms clarifying the rights of the child as a human being. Poland, being a member of the UN Council of Europe and the European Union, and a party to many acts of international law, is obliged to perform the resulting tasks contained in international agreements.

Taking into account the thoughts contained in anthropological philosophy, personalistic philosophy, philosophy of dialog and responsibility, one should indicate the understanding of the subject and subjectivity of the child. From the concepts of these philosophies it follows that a child is a person who is an entity – a substance that is a self-existing entity. This means that a person is a substance – subject, the most perfect form of existence, an individual, undivided unity, an identical and reasonable being. Recognition of the child's subjectivity is a regional standard of respect for the child, which is determined by acts of the Council of Europe bodies, such as: the European Convention on the Exercise of the Rights of the Child deals with the protection of the best interests of the child in proceedings concerning it, the situation of the child before the authorities in charge of his/her affairs and in the context of family matters. The Convention indicates the obligation to develop procedures to ensure that a child with an adequate level of knowledge, information, hearing of his/her opinion, appointment of a representative if it is not possible for him/her to be represented by a statutory representative (parents, guardians, probation officer). The child is the subject of both human rights and the rights of the child, which are gradually updated at a given stage of life. Therefore, the rights of the child must not be reduced by detaching them from their subject, i.e. the human being – a person at a certain stage of development. There is no doubt that human development from the

beginning to the end of his/her life is personal. The correct understanding of the child as a human being – a person – lays the foundation for other more detailed approaches to subjectivity, such as the subjectification of rights, specific needs and actions or social relationships. If a man is a person from the beginning of his or her existence, he or she has been developing as a person from the beginning; this means that “taken as a whole, his or her development aims at such a level of updating his or her dispositions that will allow for a mature personal life” (Czupryn, 2015, p. 76). All six signs of human personal existence (i.e. cognition, love, freedom, subjectivity of the law, completeness and dignity) exist in the social context, i.e. the necessity-based system of interpersonal relations, in which people who are independent in themselves, in their actions, however, situate the human person as acting for the “other”, i.e. for another personal being, because only such a way of acting allows for the full development of man” (Krapiec, 1999, p. 55).

Realistic anthropology includes, above all, the defense of the substance of a person – a person is a subject – a substance, understood on the basis of an existential concept of a being. If something is a being, it is because it exists. In the rights of the child, indeed, the term “person” appears in a legal, technical sense as a bundle of rights and a subject with a social status assuming a deeper philosophical sense of the person. This very personal way of existence of a child is a formal prerequisite for his/her rights and protection. The reference to the understanding of the child as a person when addressing the issue of children’s rights and their protection is a prerequisite for any progress in this field, both in theory and in practice.

It should be clear that childhood is a reality that has its own meaning. This is clearly emphasized by J. Wilk (Wilk, 2003, p. 25) “childhood is a reality that has its own meaning. It is not only as if it were an initial stage, but it is a full stage of human existence with its own value. As a child, man updates their own, inherent, in own way valuable life forms, and through these forms of human life they meet their world in their own way, and in a perfect way at this stage. In early childhood, very valuable phenomena of human personality formation take place. However, these are not the ultimate determinants. Childhood, therefore, has its meaning for “being” a man because in it the ways of behavior that belong to the healthy existence of a human being are particularly clear: trust in one’s own being, openness to everything that even an unforeseen encounter brings, readiness to be at one’s disposal, as if transgressing oneself, the primordial elements of thinking and feeling, fantasy, expecting the future, a fundamental turn towards reality and some fundamental sense of good and evil. That’s what a child is”.

Every period of life has equal dignity and must be recognized and respected, hence the correct experience of childhood is a fundamental right of the child, which is sometimes violated or threatened, and both family department judges and probation officers, whose concern should be that there will be no children without childhood, are probably aware of this fact. This is because they are responsible

for assessing the degree and reality of chances for exercising children's rights in Polish reality. It should be noted, however, that the issue of the protection of children's rights is usually primarily related to legal provisions, where it is sometimes an interdisciplinary issue, while the problem of the child should be dealt with holistically. These bodies should bring the rights of the child into effect by implementing them in the social and educational life of society. Bringing into effect itself proves that the real advantages of any legal regulation are proven by practice, because laws are implemented primarily by people, by active rather than passive state bodies. "The answer to the question of how the law is brought into effect is crucial to the answer to the question of the law itself, according to A. Kaufmann, there is no law outside the process of bringing it into effect. The law in the full sense of the word is a specific decision, stating what is right here now" (Kaufmann, 1961, p. 56). It is undoubtedly a complex process to bring the law into effect. According to A. Kaufmann, a person plays a fundamental role in the process of bringing the law into effect. A person as a subject is precisely what is constant in the process of bringing the law into effect. It is also a condition for this process to be possible. (Kaufmann, 1965 p. 26).

S. Weil pointed out that "the concept of obligation goes beyond the concept of the law, as the latter is referred and subordinate to the former. The law is not right in itself. It is so only by virtue of an obligation of which it is equivalent. The law is not brought into effect by the one who has it, but by other people who feel obliged towards him/her. An obligation, even if no one recognizes it, will not lose anything of its full existence. But a law that nobody recognizes is not worth much (Weil, 1973, p. 9). S. Weil pays less attention to the need to be able to defend one's rights and stresses that the deepest basis of human rights is commitment to the other, their life, freedom, social vocation, brotherhood, solidarity.

With the understanding of the relationship between right and duty, in which the duty to acknowledge what belongs to others (and this is in fact their right), e.g. to children, the elderly, is given priority, this human relationship returns. The relationship between the protection of the individual (person) and the protection of the social group (communities) is the axis of conflict, two clashing visions of democracy and rights in the constitutional and legal order. The order of law (*ordo juris*) is an objectively existing arrangement involving a set of interpersonal relationships in which people organize their activities for the sake of recognizing the real relationships with another person that are the basis of the duty to act for the good of other people.

The justice system (including judges, probation officers) operates in a specific culture of society, within the framework of legal culture, and navigates in the immensity of legal regulations. The behavior of the addressees of the law in relation to legal norms is connected with the state of an individual's legal awareness. The most important element of legal awareness is the willingness to adopt certain behavior towards the law, i.e., the right attitude towards the law

(Gryniuk, 2002, p. 21). Undoubtedly, culture and law are interconnected. Legal culture is defined as a set of socially performed symbolic actions, implementing the patterns of symbolic actions contained in law. (Pafecki, 1972, 1974). The triad: Greek philosophy – Roman law – Christian ethics forms the foundation of European legal culture, as well as of the whole European civilization (Szafarz 1997, p. 5; Rot, 1995; Tokarczyk 2001). A European legal culture characterized by personalism, legalism and intellectualism has developed on our continent. The personalism of the European legal culture is about the domination of the person as subject, purpose and intellectual point of reference in the idea of law.

Nowadays, the justice system operates in various areas of counter-knowledge and counter-culture, which construct people's social identity and function alongside the existing culture content curriculum, social norms, values or curricula.

It operates in the mixture of a multicentric system of law and in the social, political and economic realities.

It has been assumed that there is no neutral activity, each practice implies a specific theory and philosophy, including the vision of the human person, family, society. The essence of judicial or administrative practice presupposes the existence of a goal or an ideal to be achieved. The shaping of a sustainable basis for human life results from culture and the values derived from it. It is considered that the beginning of the law is not a rule, but a maximally communicative, interpersonal, relational, rational decision. The probation officer should be able to benefit from the advantages of personalistic approaches, because it is a system that takes into account not the idea, not the aspect of philosophical assumptions, but the world of the person. It is the person who is the base for both anthropology and universal interpretation of being. Personalism takes a different starting point than the one proposed by Platonism (idea) or by Aristotelianism (act, ability), Augustinianism (spiritual human acts) or Cartesianism (thought). What is important in personalism is that it comes from a person, who is nevertheless always correlated with other people (the very concept of a person means face-to-face relationship, being towards).

II

Human rights, including the rights of the child, form the foundation of the legal order. The growing role of the international community in efforts to effectively protect children's rights around the world has resulted in a legal act called the Rights of the Child, which is in force in countries that have ratified it. Article 9 of the Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483, as amended), which provides for Poland's compliance with international law binding on it, covering to a large extent instruments concerning the protection of human rights, and cites Article 91, which states that "an international agreement

ratified with the prior consent expressed in the Act has priority over the Act, if the Act cannot be reconciled with the agreement”, and in Polish legal order conventions, treaties protecting human rights, including the rights of the child, have the status of such agreements. Under Article 9 of the Constitution, it can be concluded that the application and interpretation of the norms of national law should be accompanied by compliance with the norms of international law, including customary law and general principles of international law (Masternak-Kubiak, 1997, p. 207; Banaszak 2001, p. 145–152). The emergence of this issue makes it necessary to re-evaluate many findings of the prevailing doctrine of particular branches of law and to choose an appropriate methodology of conduct. Undoubtedly, the integration of the Polish legal system around the axiology of human rights has many theoretical and practical advantages, contributing to a more conscious reading of the text of human and children’s rights. International law is becoming the basis for a modern model of understanding human rights, including the rights of the child. They allow to justify the thesis that respect for the rights of the child is one of the fundamental obligations of the law and its enforcement. Skillful law enforcement and linking to general principles such as the Convention on the Rights of the Child is therefore important in all judicial and probation activities. This means that any action affecting children must take into account their best interests as a matter of priority. States Parties are required to assess and take into account as a matter of priority the best interests of children in relation to a group of children or children in general in all actions affecting them. This is particularly true for all implementing measures.

As L. Wiśniewski points out, the adoption of the Convention on the Rights of the Child was justified in spite of other universal and regional acts, because “The Convention on the Rights of the Child protects the most vulnerable human beings from threats against which they are completely helpless or can hardly defend themselves. The protection of children’s rights must therefore be given special attention and thus remind the world of adults of their basic and natural duty, i.e. care for the successful development of the new generation”. (Wiśniewski, 1998, p. 11). This recognition of the child’s subjectivity and bringing of their rights and freedoms into prominence through the formulation of a catalog of these rights is reflected in this Convention. It has set universal legal standards for the protection of children from ill-treatment and exploitation, neglect, demoralization, while at the same time giving children a guarantee of basic human rights. It provides an axiological and normative basis for actions taken for the benefit of children at global, regional, national and local level. While analyzing the consequences of the covenants, treaties, conventions on human rights and agreements ratified by the Republic of Poland, E. Łętowska notes, among others, that “family law seems to have not yet fully recognized the consequences for many of its institutions of the “disobjectifying” of the child as a subject of protection, being a consequence of both the European Convention (right to privacy, freedom of conscience, multiple

branches of the right to upbringing, freedom from degrading treatment) and the Convention on the Rights of the Child. Even the key in family law concept of the “welfare of the child” still sins in our country with a paternalistic approach that needs to be revised from a human rights point of view (Łętowska, 1999, p. 116).

The Convention on the Rights of the Child is commonly referred to as the three “p” conventions: provision, protection and participation.

The general principles contained in the Convention and expressed in Articles 2, 3 (1), 6 and 12 are very important. Article 2 obliges States to respect and ensure the rights of every child under the jurisdiction of the State without discrimination on any ground. Article 3 (1) formulates a catalog of those rights by specifying the rights and freedoms of the child. The article concerns safeguarding of the best interests of the child by public or private institutions.

Article 6 of the Convention obliges States to recognize that every child has an inalienable right to life and to be provided with the best possible conditions for survival and development. Article 12 includes the rights of the child to express their views in procedural internal rights. It should be noted that the main principle of Article 12 is that States Parties should seek to ensure that the interpretation and implementation of all other rights that form part of the Convention are based on its provisions.

Article 3 (1) states that “in all actions relating to children taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. The Convention refers to the best interests of the child in a number of other Articles, including Article 9 (separation from parents), Article 10 (family reunification), Article 18 (parental responsibilities), Article 20 (deprivation of the family and foster family), Article 21 (adoption), Article 379 (c) (imprisonment and separation from adults), Article 40 (2) (b) (procedural guarantees, including the necessary presence of parents at court hearings in criminal matters involving children who have entered into conflict with the law). Reference to the best interests of the child is also included in the Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure (preamble and Articles 2 and 3) and in the Protocol on a Complaints Procedure (OPCP). The Convention is supplemented by three Optional Protocols.

The Convention on the Rights of the Child needs to be implemented in the individual countries that have ratified it. However, the comprehensive approach cannot be limited to the implementation of the specific provisions contained in Articles 37 and 40, but should take into account the principles guaranteed in Articles 2, 3, 6 and 12 and all other relevant articles, e.g. Articles 4 and 39.

The family judge and probation officer is to interpret the child’s development in a holistic way, encompassing his or her physical, mental, spiritual, moral, psychological and social development.

The Committee on the Rights of the Child in its General Comment No. 14/2013 indicates that the concept of the best interests of the child has a threefold nature, which is expressed through: 1) a substantive right, that is to say, the right of the child to have his or her best interests considered and taken into account as a primary matter when considering different interests in order to decide on a particular case and to ensure that this right is always respected when taking decisions concerning a child, a group of specific or indefinite children, or children in general (Article 3(1) of the Convention, which constitutes an internal obligation of the States Parties, is directly applicable, and is therefore self-enforceable and can be invoked before a court); 2) the principle of basic legal interpretation, so that if a provision can be interpreted in more than one way, the one that best serves the child's best interests must be chosen (the basis for interpretation are the rights guaranteed by the Convention and the optional protocols); 3) the proceedings procedure, i.e. whenever a decision is to be taken which will have an impact on a particular child, a particular group of children or children in general, an assessment of its possible (positive or negative) impact on the child or children concerned by the decision should be taken into account. Assessing and determining the best interests of the child requires procedural guarantees. The statement of reasons for the decision must contain a statement indicating that this right has been expressly taken into account. States Parties should explain how this right was respected in the decision, i.e. what actions were considered to be in the best interests of the child, what criteria were adopted and how the interests of the child are compared to other policies or solutions in specific cases.

In the administration of juvenile justice, judges and probation officers must apply the general principles contained in Articles 2, 3, 6 and 12 of the Convention as well as the fundamental principles for juvenile justice contained in Articles 37 and 40. The Committee on the Rights of the Child introduced in its General Comments the principles of dealing with a child in conflict with the law. The model of responsibility when dealing with the child involved in offending promoted by the Convention is primarily based on: – limiting to a minimum the application of the traditional justice system and the implementation of special systems for dealing with juveniles, – limiting state intervention in the form of punishment, while implementing preventive strategies in the field of social care for children and social assistance in a broad sense, – taking into account the best interests and welfare of the child in all matters concerning the child, – specializing bodies dealing with cases of children involved in offending in order to professionalize them, – emphasize the “corrective concept” in the system of dealing with juveniles, – taking all measures to reintegrate the juvenile into society.

The obligation of States Parties to give due consideration to the best interests of the child is comprehensive and covers all public and private social welfare institutions, courts, administrative authorities and legislative bodies involving or concerning children. The Convention on the Rights of the Child recognizes

the primary responsibility of the parents for the child, and the role of the State and its authorities is subsidiary. The State is obliged to assist parents in fulfilling their responsibilities and obligations towards the child and to control how they fulfill them. The family has constitutionally guaranteed autonomy, but no extraterritoriality. If the best interests of a child are endangered or violated within the family, in an educational or other institution, then we are dealing with a failure to exercise the subjective rights of a child, and undoubtedly in such a situation the child must be protected by authorized entities – legal protection and assistance authorities. The Constitution of the Republic of Poland and the Acts provide that every citizen, if he or she notices that the rights of the child are threatened or violated, has a civic duty to take appropriate action, informing the relevant services, including the Family Court, the Court Probation Service Team, the Children’s Ombudsman and others. The protection of the rights of family members, especially children, depends to a large extent on the network of the institutions dedicated to such protection.

III

In the case of Family Courts, data, social and legal facts “come from the concrete world, experienced by children and families, care and upbringing problems, and more specifically, upbringing situations”. In recognizing these issues, the presented concept of man is revealed. When speaking about the concept of man in relation to the educational situation, one should first of all bear in mind that the nature of the relationship between the educator and the pupil is not so much the concept of an adult as the concept of a human being – child. It turns out that it is not the same, because in the upbringing situation there are basically two concepts of man. This is often a clearly inarticulate comparative assumption: what characteristics of an adult does a child have and what it does not have and in what form, is an essential criterion for differentiating the concepts of upbringing and care. At the same time, it should be noted that the world of values is fragmented into the values of adults and the values of children. The area of reciprocity entails the emergence of a cooperating communication pattern, i.e. the adoption of the principle of dual agentship in the educational relationship. The personal way of existence of a child is a formal prerequisite for its rights and protection. In the formal aspect, a child is a person, that is, a single, concrete, isolated being, a subject and source of autonomous activities, an individual substance and autonomous creature characterized by unity and substantial (bodily and spiritual) integrity, individuality. Due to the personal manner of existence, expressed by dignity, a prohibition is formulated to treat a person as a means, object, thing and tool in legal and educational work. The reference to the understanding of the child as a person when addressing the issue

of children's rights and their protection is a prerequisite for any progress in this field, both in theory and in practice, including in court and administration.

The values present in the world of man as a cultural whole, in which nature is also included this time, make man's very style of being in various situations bear witness to a world of values. One of such situations is an educational situation in which the world of values is made present in the form of a certain style of being of adults with children. You do not know what values are they at this point, but always "some". These two components of the educational situation: the human being and the values, are already differentiated on the substantive, that is the level of content.

The family court stands eye to eye with the cognitive problems of the upbringing situation. The family is the basic place of the care and upbringing process and at the same time an aspect of man's existence, of their everyday life in which various upbringing situations take place. Both the man and the situation become the subject, the field of work of the Court. The man and the situation should be known, described as they are in reality. There is also a need to recognize oneself in a given situation. The time to decide and do what is right will come later. At this stage the truth of the actual state of affairs has to be found. Although the human intention to not leave the child to its own natural existence, but to understand their "being" in a way that cannot be derived from nature itself, lies at the basis of cognition, this intention cannot meaningfully dominate (e.g. through culturally established priorities) in the process of reliable knowledge of the object and its description. What becomes an object of cognition in this case directs our attention to basic, source experiences. Consciousness is the basic distinguishing feature here. The legal and pedagogical awareness of both family judges and curators must embrace not only the subject matter of the examination, but also the perspective that belongs to it. While the subject matter is the upbringing and caring situation, the perspective is determined by the values through which the best interests of the child are described, not the parties to the conflict, i.e. the adult dispute. Usually, the upbringing and caring situation is understood as a place where one acts, educates, concentrates on the realization of certain values, which are already being examined and shown.

M. Grzegorzewska argues that not every person can become a probation officer because this work cannot be "done away with". The probation officers' activities should be driven by a deep humanistic trend, a sense of responsibility, a friendly and kind attitude towards people, care not only for their fate, but also for the social life into which they enter, and the basic feature of the probation officer's educational attitude becomes faith in people and trust in people (Grzegorzewska, 1967, p. 100–104). The probation officer should include the entire family in their work, because the basis of any social rehabilitation impact is etiotropic behavior, i.e. removing the causes of negative behaviors that usually occur in the family environment. Therefore, the probation officer should be an executor of pedagogical

and legal actions, as well as a researcher, observer, reflective humanist, in a word, an institution monitoring care and protection services and a co-participant in the upbringing situation. An upbringing relationship is created as a specific interpersonal interaction between the two entities.

The relationship between the probational officer and the ward can be compared to that between an adult and a child, noting that it is built on a general human situation, since the attitude the probation officer adopts towards the ward is in its basic framework identical to their general attitude towards people. It is common knowledge that an attitude is formed almost from the moment of birth, and its form depends on various factors: genetic, emotional influences of early childhood (emotional atmosphere of the family home, mutual emotional relationship with parents and siblings), successes and failures in first and later social contacts, role in groups, social position, knowledge about the human being, ability to manage one's emotional reactions, degree of knowledge of oneself, etc. A reflection of a more general nature is born: is it not that the relationship between the probation officer and the ward is more primordial, as a guide and the person guided by them into the ward's everyday life? That it is the foundation of this ontological component of human nature expressed in this peculiar inter-generational relationship which is upbringing and care.

It seems that the specificity of the contact between the probation officer and the ward is the requirement to maintain a balance between the distance allowing for an expert diagnosis of the situation, and the need for sincere interpersonal contact – “face to face”, and with the observer not alienated from the situation. As E. Levinas puts it, “face” is what a man “is”, it needs matter, but it does not inhabit it. “The true essence of man appears in their face that makes them infinitely different.” (E. Levinas, 2002, p. 348). The philosophy of dialogue indicates that a dimension of ethical truth is revealed via the “face”. This is a special kind of truth, a dialogical truth, one that appears in a meeting with another person. Levinas says that ethical truth happens between people, it takes place through “curving of the subjective field”, in the “curvature of intersubjective space” (Levinas, 2002, p.349). It is a certain form of mutual understanding and mutual sensing.

There is no doubt that the probation officer participates in the educational impact of the Court, and more broadly in the law, therefore it should be acknowledged that their recognition is always marked by axiology, or rather agathology: the horizon of good arising from the experience that “something should not be there”. However, it is the task of the probation officer as a human to check, with all the reliability and risk existing for the person themselves, whether the good they recognize finds its proper form. However, they should first of all ask themselves – who they are, as a person, an educator, and what do they bring to the situation as a co-participant in the implementation of legal norms. One should agree with M. Buber that “in the beginning there is a relationship”, and

the fundamental fact of human existence is “a man with a man”, i.e., a dialogical situation, a dialogical relationship (Buber, 1992, p. 491). In Levin’s philosophy, the relationship with the other is asymmetrical because one is supposed to demand from oneself first and foremost, without even requiring compensation or dues.

Since the beginning of its creation, the work of the probation officer is at the same time a charitable work, among other things, because of the fact that in their own way of thinking as the “ideal observer” from an ethical and methodological point of view the matter is of great importance, considering that understanding the upbringing and caring situation is closely connected with experiencing it. In this case, man experiences what they understand somehow in the overall process of cognition. What they learn is both understood and experienced in some way.

Undoubtedly, in the case of the “ideal observer”, the personalistic type of understanding of man is directed towards the understanding of man in oneself, but in the present case the field of their research must be extended to include being in the world, and above all being for the other (a child in an upbringing and caring situation).

The issues of evaluation and assessment, which are a problem of legal, pedagogical and educational practice, as well as a dialogical upbringing attitude, are present in the work every day. Many people follow the theory of ideology, the expectations to meet social goals and interests, and somewhere “on the way” they lose who they work with, on their own sense of life. A probation officer whose work involves influencing others should have a strong personality manifesting itself mainly in the ability to solve their own problems, self-acceptance, emotional maturity, faith in their own skills, positive attitude towards oneself and others, thus creating one’s position.

The social position determined by a person’s possession of certain characteristics depends on what value a group attributes to particular characteristics. The characteristic that society considers as the basis for attributing a high or low position is variable, depending on the situation. R. Linton said that “there is no role without a position or position without a role” (quoted from Baňka, 1989, p. 48). Social position, status and social role are concepts that are close, but not identical. They are an important issue in the context of the function of the probation officer. Status is a certain value attributed to the social position. The social role is the expectations of how a member of the community should behave. An individual’s position in society is usually associated with higher prestige expressed through recognition and respect. The probation officer’s attitude is based on three values – the pillars of pedagogical work – responsibility, respect and trust. Such an order of conduct: first, to get to know one another honestly, then to do something with someone in mind, forces the court and its bodies not only to demand research honesty, but above all the principle of responsibility towards the charges for participation in their lives. The recognition of any act as responsible, and therefore also a legal and educational act, must be accompanied

by respect for the conditions of legal and educational reality. Following R. Ingarden's assumptions about the qualification of a person acting responsibly, they now find their continuation (Ingarden, 1973). Only the one who is aware of their own abilities and the object of their action, in other words: one who is aware of the characteristics of the object of his work, acts responsibly.

Final thoughts

Considerations on court probation in the service of a child cannot be separated from the current upbringing, educational and judicial crisis and the state of moral and legal anomaly. These phenomena should inspire constructive reform efforts. The inspiration for the research was the philosophy of dialogue with a child and the concept of the "face". I treat dialogue as a specific form of social relationship between the two entities in the process. Pointing to the significant change taking place in the contemporary society, emphasis should be put on the complex and difficult professional role of the probation officer, who should be characterized by a self-controlled personality, broad horizons of thought, confidence in other people, acceptance of moral and legal standards according to which nothing can exempt the probation officer from responsibility for their own behavior. The social position of the practiced profession of probation officer obliges to high mental and moral qualifications. This can result in strong group integration of probation officers' interests. The probation officer – a professional, must appear as a person not so much as "who and what they are", i.e. statically, but "how they act and what they should do" in order to fully realize their humanity and the humanity of others. This understanding refers to the child as a human being – a person, setting the basis for other specific approaches to subjectivity: rights, social relationships, specific needs and actions. On the other hand, the evolutionary framework of the family (Szlendak, 2010), the manifestation of which is the social promotion of the so-called alternative marriage and family models, weakens the position of the child in the family, creating threats to the rights and needs of the child. It also reduces the real possibilities of both the realization of children's rights and the materialization of their rights within and by the family with which the probation officer works. There is a misconception in society that laws, conventions, treaties, declared rights and freedoms will suffice and everything will be resolved, everything will work out, the situation of the child will change. In these conditions, the probation officer must be at the forefront of making children's rights a reality. They must function in a dynamic interweaving of social changes, they must be characterized by an understanding of the idea of children's rights as human rights (Stadniczeńko, 2015). They should function in a culture of dialogue expressed in the ability to enter into such a type of relationship, for which openness, subjectivity, sympathy, mutual respect of dialogue partners are

characteristic features. The status of the child, as expressed in the Convention on the Rights of the Child, is based on the premise that the child is an autonomous entity with a reflection on the options for the weaker, that the child, as a human being, requires respect for identity, dignity, belonging and should enjoy all the standards of international human rights protection. This should be a guideline for the probation officers in the service of the child.

The title of the article contains the imperative, the canon of social responsibility of each person. As E. Durkheim put it, an individual acting in a specific role always remains, although for various reasons, an officer of society (Durkheim, 1999, p. 90). From this role, there is a need to have a deepened legal and pedagogical awareness, and at the same time to embrace not only the specificity of the object on view, but also the perspective that belongs to it. Actually, all probational work and activities for the benefit of a child should be imbued with the idea of giving it human rights. At the same time, the probation officer must be able to properly sense what threatens the child's development the most, be able to see the primary importance of respecting the child's right to respect, the right to treat them as a person, an entity.

The scope of probation officers' work is very wide, from working with families who are not efficient in terms of upbringing to working with pathological families within the criminal subculture. The personality factor plays a significant role in this work of helping another person in a direct interpersonal relationship. The tasks imposed on probation officers require professional preparation in the field of social rehabilitation, psychology and social work, law, and often also therapy, mediation and negotiation. The legal framework sets the standards of behavior for serving children and working with the family. The framework of both national and international law must find application in probational work. The probation officer should be aware that while working in the sphere of culture they have to deal with the phenomena pointed out by A. Bator: "it is a feature of the modern world that people live in an entanglement of signification structures, between which there is a constant flow, so that cultural patterns lose their coherence, timelessness and locality" (Bator, 2003, p. 37).

The probational attitude should guarantee professionalism, impartiality in the performance of public tasks in a state governed by the rule of law, which realizes the principles of social justice.

References

- [1] Banaszak B., 2001, *Prawo konstytucyjne*, PWN, Warszawa.
- [2] Bańka D., 1989, *Psychologiczne koszty podejmowania i pełnienia ról zawodowych*, [w:] *Psychologiczne problemy funkcjonowania człowieka w sytuacji pracy*, (red.) Z. Ratajczak, UŚ, Katowice.

- [3] Bator A., 2003, *Globalizacja jako perspektywa postrzegania prawa*, [w:] *Z zagadnień teorii i filozofii prawa*, (red.) J. Helios, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław.
- [4] Buber M., 1992, *Ja i Ty*, PAX, Warszawa.
- [5] Czupryn B., 2015, *Dojrzewanie młodzieży – antropologiczna perspektywa dojrzałości*, [w:] *Prawda o człowieku fundamentem rozwoju osobowego*, (red.) B. Czupryn, Fundacja Servire Veritati Instytut Edukacji Narodowej, Lublin.
- [6] Durkheim E., 1999, *O społecznym podziale pracy*, PWN, Warszawa.
- [7] Gromek K., 1988, *Kurator sądowy – nowe uregulowania prawne*, „Szkola Specjalna”, nr 2.
- [8] Gryniuk A., 2002, *Kultura prawna a świadomość prawna*, „Państwo i Prawo” nr 2.
- [9] Grzegorzewska M., 1967, *Postawa kuratora sądowego wobec nieletniego znajdującego się w warunkach wykołajenia*, „Szkola Specjalna”, nr 2.
- [10] Grześkowiak K., 1976, *Aktualne i postulowane zadania kuratorów sądowych*, „Problemy Wymiaru Sprawiedliwości” nr 10.
- [11] Ingarden R., 1973, *Książeczka o człowieku*, Wydawnictwo Literackie, Kraków.
- [12] Kaufmann A., 1961, *Das Schuldprizing. Eine Strafrechtlich – rechtsphilosophische Untersuchung*, Heidelberg.
- [13] Kaufmann A., 1965, *Analogia und „Natur der Sache”*, Karlsruhe.
- [14] Kaufmann A., 1986, *Voruberlegungen zu einer juristischer Logik und Ontologie der Relationen*, „Rechtstheorie”, nr 17.
- [15] Krąpiec M.A., 1999, *Dzieła XIX. Człowiek w kulturze*, Wydawnictwo KUL, Lublin.
- [16] Levinas E., 2014, *Całość i nieskończoność. Esej o zewnątrzności*, PWN, Warszawa.
- [17] Łętowska E., 1999, *O znaczeniu praw człowieka dla polskiego systemu prawa*, [w:] *O prawach człowieka w podwójną rocznicę paktów. Księga pamiątkowa w hołdzie prof. Annie Michalskiej*, (red.) T. Jasudowicz, C. Mik, TNOIK, Toruń.
- [18] Łopatka A., 2000, *Dziecko – jego prawa człowieka*, Polskie Wydawnictwo Prawnicze „Juris”, Warszawa–Poznań.
- [19] Łopatkowa M., 1992, *Pedagogika serca*, WSiP, Warszawa.
- [20] Marek A., 1991, *Prawne i kryminologiczne aspekty polskiego systemu postępowania z nieletnimi*, „Przegląd Penitencjarny i Kryminologiczny”, nr 18(58).
- [21] Masternak-Kubiak M., 1997, *Umowa międzynarodowa w prawie konstytucyjnym*, PWN, Warszawa.
- [22] Parton N., 2003, *Rethinking professional practice: the contributions of social constructionism and the feminist ‘ethic of care’*, „British Journal of Social Work”, nr 33.
- [23] Pytka L., 2002, *Urok i piekło dzieciństwa. Konstatacje i rekomendacje*, [w:] *Być dzieckiem i przetrwać*, prac. zbior. pod red. B. Głowackiej i L. Pytki, Warszawa.
- [24] Sawicka K., 1985, *Projekt modelu organizacyjnego kurateli sądowej*, „Zeszyty Naukowe Instytutu Badań Prawa Sądowego”, nr 23.
- [25] Smczyński T., 1999, *Pojęcie dziecka i jego podmiotowość*, [w:] *Konwencja o prawach dziecka. Analiza i wykładnia*, ARS BONI ET AEQUI, Poznań.
- [26] Szlendak T., 2010, *Socjologia rodziny. Ewolucja, historia, zróżnicowanie*, PWN, Warszawa.
- [27] Weil S., 1973, *La prima radice, Preludio ad una dichiarazione di doveri verso l essere umano*, Milano.
- [28] Wilk J., 2003, *Wobec pytania: „Kim jest dziecko?”*, [w:] *W służbie dziecku*, (red.) J. Wilk, Lublin.
- [29] Wiśniewski L., 1998, *Geneza Konwencji o Prawach Dziecka i stosunek jej norm do innych aktów prawa międzynarodowego*, [w:] *Konwencja o Prawach Dziecka – analiza i wykładnia*, (red.) T. Smczyński, Poznań.