

Marcin Kryński

ORCID: 0000-0002-6610-3673

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Geneza, problemy definicyjne i założenia prawa do edukacji w kontekście Konwencji o Prawach Dziecka

**The genesis, definition problems and assumptions of the right to education
in the context of the Convention on the Rights of the Child**

STRESZCZENIE: Celem artykułu jest przedstawienie prawa do nauki ze szczególnym uwzględnieniem Konwencji o Prawach Dziecka.

Analizując pojęcie prawa do nauki należy stwierdzić, że nie ma jednej, ogólnej i spójnej definicji nauki, która byłaby dla wszystkich satysfakcjonująca i oczywista. Wynika to z niejednoznaczności tego terminu, a także różnorodności jego desygnatów. Głosicielem idei upowszechnienia oświaty był między innymi czeski pedagog, filozof i reformator Jan Amos Komeński. Z kolei szwedzka feministka i pedagog – Ellen Key uważała, że wiek XX będzie „stuleciem dziecka”, w którym dojdzie do kształtowania nowego człowieka, a przez to świat stanie się szczęśliwszy i lepszy. Zwolennikiem emancypacji dziecka w Polsce był Janusz Korczak, którego myśl stała się jednym z fundamentów Konwencji o Prawach Dziecka.

Konwencja o Prawach Dziecka powstała z inicjatywy Polski. Zintensyfikowane prace rozpoczęły się w 1978 roku, kiedy Polska przedłożyła Komisji Praw Człowieka ONZ projekt Konwencji o Prawach Dziecka. Był to punkt zwrotny w procesie opracowywania kompletnego zestawu praw dziecka, nazwanego już w projekcie „Konwencją”. Następnie Organizacja Narodów Zjednoczonych ogłosiła rok 1979 Międzynarodowym Rokiem Dzieci.

Kapitalistyczne i socjalistyczne poglądy na prawa człowieka ścierały się, dlatego wypracowanie konsensusu w sprawie ostatecznego kształtu Konwencji było

skomplikowane. Jednak nasilający się pod koniec lat 80. opór społeczny, który w późniejszych latach doprowadził do upadku reżimu totalitarnego czy komunistycznego, był niewątpliwie czynnikiem, który walczył przyczynił się do prac nad Konwentem. Przewodniczący polskiej delegacji prof. Adam Łopatka nazwał Janusza Korczaka jednym z prekursorów i propagatorów praw dziecka. W sumie, po 11 latach pracy, wydarzenia te zakończyły się przyjęciem 20 listopada 1989 roku przez Zgromadzenie Ogólne ONZ Konwencji o Prawach Dziecka.

W Konwencji tej prawo do nauki zostało bezpośrednio uregulowane w art. 28, a także pośrednio w art. 29.

SŁOWA KLUCZOWE: prawo do nauki, konwencja o prawach dziecka, Janusz Korczak, Ellen Key

ABSTRACT: The aim of this article is to present the right to education with particular emphasis on the Convention on the Rights of the Child.

When analyzing the concept of the right to education, it should be stated that there is no single, general and coherent definition of education that would be satisfactory and evident for everyone. This is due to the ambiguity of this term as well as the diversity of its designates.

The promoter of the idea of popularizing education was, among others, Czech educator, philosopher and reformer Jan Amos Comenius. In turn, the Swedish feminist and educator – Ellen Key believed that the 20th century will be the “century of the child”, in which the new man will be shaped, and thus the world will become happier and better.

An advocate of the emancipation of the child in Poland was Janusz Korczak, whose thought was one of the foundations of the Convention on the Rights of the Child.

The Convention on the Rights of the Child was established on the initiative of Poland. Intensified work began in 1978, when Poland submitted to the UN Human Rights Commission a draft Convention on the Rights of the Child. It was a turning point in the process of developing a complete set of children’s rights, already called the “Convention” in the project. Following this, the United Nations declared 1979 the International Year of Children.

The capitalist and socialist views on human rights clashed and therefore working out a consensus on the final shape of the Convention was complicated. However, the social resistance intensifying at the end of the 1980s, which in later years led to the collapse of the totalitarian or communist regime, was undoubtedly a factor which strongly contributed to the work on the Convention. The head of

the Polish delegation, prof. Adam Łopatka referred to Janusz Korczak as one of the precursors and promoters of children's rights. Altogether, after 11 years of work, these events ended with the adoption, on November 20, 1989, by the UN General Assembly, of the Convention on the Rights of the Child.

In this Convention, the right to education is directly regulated in Art. 28, as well as indirectly in art. 29.

KEYWORDS: the right to education, Convention on the Rights of the Child, Janusz Korczak, Ellen Key

After the end of World War II, human dignity gained the highest rank and became the basis of the ideology of human rights. Human dignity, which is an immanent property of a human being, is, according to Jerzy Zajadło, a specific metaphysical construction.¹ It should be emphasized, however, that the metaphysical nature of human dignity does not diminish its significance, the more so as most of the "values protected by law are of this kind. Moreover, the entire legal system can be considered a metaphysical phenomenon".² At the same time, this "going" by the human being beyond the purely physical reality is, in a way, the first step on the way to the emergence of a culture, an element of which is, inter alia, legal system.

It should be emphasized that Jacques Maritain, the eminent French philosopher, clearly stated that: "The human person by his own nature has the right to respect and is a subject of law, he has rights. There are things due to a man precisely because he is a human".³ Hence, it is covered by a whole group of rights, including the right to learning and personality development.

The continuous development of all societies from the beginning of their existence is inextricably linked with passing on to the next

¹ J. Zajadło, *Godność a prawo*, [w:] J. Zajadło (red.), *Leksykon współczesnej teorii i filozofii prawa: 100 podstawowych pojęć*, Warszawa 2007, s. 91.

² Ibidem, s. 92.

³ Cyt. za: F.J. Mazurek, *Godność osoby ludzkiej podstawą praw człowieka*, Lublin 2001, s. 84.

generations of cultural achievements and practical skills, because education is the carrier of cultures and values.⁴ Due to the fundamental importance of education in the development of every human being, and especially of a child, the speech is a place of the right to education with a special place about the rights of the child.

It is worth recalling that the proclaimer of the idea of popularizing education, was in the 17th century, a Czech educator, philosopher and reformer, Jan Amos Comenius. The author of the book *Wielka dydaktyka*, who wrote about the need to popularize education in terms of social status and gender. "Let no one believe, then, that anyone can truly be human unless he has learned to act as a human; that is, if he has not been educated. (...) After all, it is the law of all creatures that they start from nothing and develop also in terms of their existence and action".⁵

And in the nineteenth century, as a result of widespread urbanization, the quality of life of people improved, but they were looking for inexpensive workforce also among children, because their work was not only cheaper but also more efficient, so everything was done to use it as early as possible, not taking into account their needs.⁶ Janusz Korczak spoke about the ruthless treatment of children at work, and even about their contemporary exploitation, pointing out that: "only factory and circus owners recognized the value of child labor and exploited it brutally and robberly for their personal purposes".⁷

And in 1900 in European culture, thanks to the achievements of the Swedish feminist and educator – Ellen Key and the supporters of the so-called *Nowe Wychowanie* took place a reevaluation of issues related to children and childhood. Ellen Key By preaching almost a cult of the child, she granted him the right to self-development, upbringing

⁴ *Od swartości społecznej do demokratycznego uczestnictwa*, [w:] J. Delors (red.), *Raport dla UNESCO Międzynarodowej Komisji do spraw Edukacji dla XXI wieku. Edukacja. Jest w niej ukryty skarb*, Warszawa 1998, s. 49.

⁵ J.A. Komeński, *Wielka dydaktyka*, Wrocław 1956, s. 57-58.

⁶ E.J. Kryńska, *Refleksja nad historią dzieciństwa w kontekście idei wychowania humanistycznego*, „*Civitas et Lex*” 2020, nr 1(25), s. 22.

⁷ J. Korczak, *Pisma wybrane*, wybór A. Lewin, t. 3, Warszawa 1978, s. 57-58.

and education.⁸ Unfortunately, the implementation of those ideas was impossible due to the experiences of the Second World War.⁹

An advocate of the emancipation of the child and respect for his rights in Poland was Janusz Korczak, whose thoughts about the emancipation of children and their rights lay at the basis of the most important ideological documents protecting children's rights, including the Convention on the Rights of the Child, adopted by the United Nations on November 20, 1989.¹

The right to education – definition problems

When analyzing the concept of the right to education, it should be stated that there is no single, general and coherent definition of science that would be satisfactory and evident for everyone. This is due to the ambiguity of this term as well as the diversity of its designates. Due to the origins of the term "science" in European languages other than Polish, there is a different perception of the one which we have in Poland. For example, the English *science* derives from the Latin *scientia*, while *scio* means "I know." Then, learning is knowledge subject to specific content and methodological requirements, which, however, is only optionally intended for teaching. In the historical and geographical aspect, science is a set of cognitive and practical problems, as well as methods of formulating problems and solving them, which was crystallizing over the centuries. In the European tradition, science was closely related to philosophy and art. In turn, in Anglo-Saxon and Franconian countries, science covers only mathematical and natural sciences, while in Germany, the *Wissenschaft* was perceived more broadly, without eliminating the term of the humanities from it. In Poland, on the other hand, science was interpreted even more broadly

⁸ Ibidem, s. 152-194.

⁹ B. Smolińska-Theiss, *30-lecie Konwencji o Prawach Dziecka – edukacyjne dziedzictwo Janusza Korczaka*, „Pedagogika Społeczna” 2020, R. 19, nr 2 (76), s. 13.

¹⁰ Konwencja przyczyniła się także do ponownego przypomnienia idei Korczaka po wielu latach od jego śmierci; B. Smolińska-Theiss, op. cit., s. 15.

– as theology and practical sciences: engineering, technology, and medicine¹¹. According to UNESCO, the definition of science means “the entire process of social life carried out by means of which individuals and social groups learn to consciously develop for themselves and for the benefit of the national and international community the fullness of their personal abilities, attitudes, talents and knowledge”.¹² This is a definition that is widely spread.

Hence, the right to education is defined as “the right of every human being to education in all its forms, assuming that education indirectly serves human rights, conditioning their development, and opens up to each individual intellectual possibilities to exercise their rights and give them specific content”¹³.

It is assumed that the right to education belongs to the so-called the second generation of human rights, as well as the so-called cultural rights. This law crystallized itself after World War II. Thanks to the wide acceptance of the international community, it has been reflected in the Universal Declaration of Human Rights, as well as in many other international documents specifying its provisions.¹⁴ It should be noted that the right to education is guaranteed in many acts of national, EU and international law.¹⁵ The right to education (education) has been incorporated into the universal system of human rights protection due to the conviction that the acquired knowledge and skills will guarantee an individual's personal development, mature

¹¹ W. Kryszewski, T. Pszczołowski, *Pojęcie „nauka” w internetowej encyklopedii PWN*, <https://encyklopedia.pwn.pl/haslo/nauka;3946164.html> [dostęp: 01.12.2020].

¹² J. Stadniczeńko, *Prawo dziecka do nauki – prawa w oświacie*, [w:] S.L. Stadniczeńko (red.), *Konwencja o prawach dziecka. Wybór zagadnień (artykuły i komentarze)*, Warszawa 2015, s. 160.

¹³ J. Mikosz, *Prawo do nauki*, [w:] *Prawa człowieka. Model prawny*, Wrocław 1991, s. 979-980.

¹⁴ J. Mikosz, op. cit., s. 979; Międzynarodowy Pakt Praw Gospodarczych, Społecznych i Kulturalnych (Dz.U. 1977 nr 38, poz. 169); Karta Praw Podstawowych (Dz.Urz. UE nr C 83, 30 marzec 2010).

¹⁵ A. Teutsch, M. Stoch, A. Kozakoszczak, *Opracowanie merytoryczne na temat przeciwdziałania dyskryminacji i przemocy motywowanej uprzedzeniami dla studentów, studentek, doktorantów, doktorantek, nauczycieli i nauczycielek szkół wyższych*, Kraków 2017, s. 69.

participation in the life of modern societies, thanks to which they will contribute to the realization of other human rights.¹⁶ In addition to the right to education, to the so-called cultural rights also include: the right to participate in cultural life, the right to communicate, the right to information.¹⁷

Works on the Convention on the Rights of the Child

The Convention on the Rights of the Child was established on the initiative of Poland.¹⁸ Intensified work began in 1978, when Poland submitted to the UN Human Rights Commission a draft Convention on the Rights of the Child. It was a turning point in the process of developing a complete set of children's rights, already called the "Convention" in the project. Following this, the United Nations declared 1979 the International Year of Children.¹⁹

The capitalist and socialist views on human rights clashed therefore working out a consensus on the final shape of the Convention was complicated. However, the social resistance intensifying at the end of the 1980s, which in later years led to the collapse of the totalitarian or communist regime, was undoubtedly a factor which strongly contributed to the work on the Convention. The head of the Polish delegation, prof. Adam Łopatka referred to Janusz Korczak as one of the precursors and promoters of children's rights. Altogether, after 11 years of work, these events ended with the adoption on November 20, 1989 by the UN General Assembly of the Convention on the Rights of the Child.²⁰

¹⁶ J. Stadniczeńko, *op. cit.*, s. 158.

¹⁷ J. Mikosz, *op. cit.*, s. 979.

¹⁸ B. Smolińska-Theiss, *op. cit.*, s. 15.

¹⁹ *Ibidem*, s. 14.

²⁰ *Ibidem*, s. 15.

The right to education in the Convention on the Rights of the Child

It is often pointed out that the Convention on the Rights of the Child is the greatest achievement of the international community in the field of the protection of children's rights²¹. This act is so important that it is commonly referred to as the "world constitution of the rights of the child" and it is universal in its nature. So far, 195 countries have become parties to the Convention, while Poland ratified it in 1991.²²

The provisions of the Convention on the Rights of the Child are the basis of UNICEF's activity, which makes great efforts to make them a canon of ethical principles and international standards of conduct towards children.²³

The Convention contains regulations concerning the development and rights of the child, including the right to education.

The right to education is directly regulated in Art. 28, as well as indirectly in art. 29²⁴.

Article 28 states that:

1. States Parties recognize the right of the child to education, and with a view to the progressive realization of this right on the basis of equal opportunities, in particular:
 - a) make primary education compulsory and free for all,
 - b) encourage the development of various forms of secondary education, both general and vocational, make them accessible to all children and take appropriate steps such as introducing free education and providing financial assistance when needed,
 - c) make higher education accessible to all on the basis of ability by all appropriate means,

²¹ G. Mikołajczyk-Lerman, *Konwencja o prawach dziecka a realizacja praw dziecka z niepełnosprawnością w relacjach rówieśniczych*, „Przegląd Socjologii Jakościowej” 2017, t. 13, nr 4, s. 31.

²² <https://www.gov.pl/web/rodzina/konwencja-o-prawach-dziecka> [dostęp: 04.12.2020].

²³ Ibidem.

²⁴ A. Lewandowska, *Prawo dziecka do nauki na tle idei praw dziecka*, [w:] J. Malinowska, E. Jezierska-Wiejak (red.), *Dziecko w sytuacjach uczenia się. Codzienność w poznawaniu świata i siebie*, Wrocław 2017, s. 152.

- d) make school and vocational information and counseling available to all children,
 - e) make steps to ensure regular school attendance and reduce the school drop-out rate.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and consistent with the present Convention.
 3. States Parties shall encourage and develop international co-operation in the field of education, in particular with the aim of contributing to the elimination of ignorance and illiteracy in the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this respect, particular account should be taken of the needs of developing countries".²⁵

Article 28 of the Convention on the Rights of the Child gives the child the right to education. Following this, it is also the right to access knowledge.²⁶

The Convention on the Rights of the Child has so far contained the most extensive, broadest presentation of this right in an act at the rank of an international convention. The provisions concerning the right to education in the Convention on the Rights of the Child are directly based on the Declaration of the Rights of the Child adopted by the General Assembly of the League of Nations in 1924, also known as the Geneva Declaration. In this matter, they are also its development. Focusing on an individual approach to a child should be assessed positively, especially since the aim is to provide him with an appropriate environment for multifaceted development. Each state-party to the Convention on the Rights of the Child is required to submit a report on the state of implementation of the Convention every five years. These reports are assessed by the Committee on the

²⁵ Konwencja o Prawach Dziecka przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., – Dz.U. 1989 nr 120, poz. 526, s. 1682-1684.

²⁶ Załącznik IX Komentarz Ogólny nr 1 (2001) Cele Edukacji, opracowanie P.J. Jaros, M. Michala, *Prawa dziecka. Dokumenty Organizacji Narodów Zjednoczonych*, Warszawa 2015, s. 384.

Rights of the Child, which analyzes the facts with postulates and issues recommendations for specific states-parties.²⁷

It should be emphasized that the Geneva Declaration, initiated by a Pole – Ludwik Rajchman, consists of only five principles, preceded by an introduction²⁸, which states, inter alia, that:

“By this Declaration, called the Geneva Declaration, men and women of all nationalities recognize that humanity should give the child the best it has”.²⁹ The assumption that all mankind should strive to convey to the child all the best it has is, in this passage, strongly related to the recognition of subjectivity the child and the need to protect its fundamental rights.³⁰

Moreover, in point 4 of this Declaration, it was stated that:

“4. The child should be prepared to earn a living and be protected against any kind of exploitation”.³¹ It can be concluded that one, if not the main form of preparing a child to earn a living, is education. Thanks to it, the child has the opportunity to support himself in the future.

Coming back to the Convention on the Rights of the Child, art. 29 of this Convention provides that:

1. States Parties agree that the education of the child will focus on:
 - a) developing to the fullest extent possible the personality, talents and mental and physical abilities of the child;
 - b) to develop in the child respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations;
 - c) developing in the child respect for his parents, his cultural identity, language and values, for the national values of the country in which the child lives, the country from which the child comes and for other cultures;

²⁷ A. Lewandowska, op. cit., s. 152.

²⁸ A. Krawczak-Chmielecka, *O rozwoju praw dziecka w Polsce i na świecie*, „Dziecko Krzywdzone. Teoria, badania, praktyka” 2017, t. 16, nr 2, s. 14.

²⁹ Deklaracja Praw Dziecka przyjęta przez Zgromadzenie Ogólne Ligi Narodów w 1924 roku (zwana Deklaracją Genewską).

³⁰ A. Rodkiewicz-Ryżek, J. Błeszyński, *Ochrona praw dziecka w świetle standardów polskich i międzynarodowych*, „Paedagogia Christiana” 2012, nr 2/30, s. 100.

³¹ Deklaracja Praw Dziecka przyjęta przez Zgromadzenie Ogólne Ligi Narodów w 1924 roku (zwana Deklaracją Genewską).

- d) preparing the child for a proper life in a free society, in a spirit of understanding, peace, tolerance, gender equality and friendship between all peoples, ethnic, national and religious groups and indigenous peoples;
 - e) developing in the child respect for the natural environment.
2. Nothing in this article or article 28 shall be interpreted in such a way as to prejudice the freedom of natural persons or collective bodies to establish and operate educational establishments, subject to the principles set out in paragraph 1 of this article and to the requirements that the education in such establishments is at a minimum level. standards to be defined by a given country”³².

Art. 29 sec. 1 of the Convention on the Rights of the Child concerns the objectives of education for which all States Parties have agreed. Moreover, it promotes, supports and protects the most important values of the Convention, such as the inherent dignity of human beings and their inalienable and equal rights. The goals of education contained in art. 29 of the Convention are:

- holistic development of the child’s full potential – Art. 29 sec. 1, letter a)
- development of respect for human rights – Art. 29 sec. 1, letter b)
- achieving a mature sense of cultural belonging and identity – Art. 29 sec. 1 letter c),
- socialization of the child and teaching him appropriate contacts with people – art. 29 sec. 1 letter d),
- developing a child’s respect for the natural environment³³.

Article 29 sec. 1 of the Convention gives the right to education, recognized in Art. The qualitative dimension, which expresses the innate dignity of the child, but also emphasizes that education should be child-centered, friendly towards him and recognizes his rights, and expresses the need to base the teaching process on the same principles. Science, which is the privilege of every child, is to teach

³² Konwencja o Prawach Dziecka przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r., – Dz.U. 1989 nr 120, poz. 526, s. 1682-1684.

³³ Załącznik IX Komentarz Ogólny nr 1 (2001), *Cele Edukacji*, oprac. P.J. Jaros, M. Michalak, op. cit., s. 383-384.

the child life skills, because the essence of education is to make the child independent based on developing his skills, knowledge and other abilities, dignity, self-esteem and self-confidence. In this regard, “education” encompasses much more than what is part of formal education, and it is also concerned with the many life experiences and learning processes that enable children, individually and collectively, to develop personality, talents and abilities and to lead fully and a satisfying life within society³⁴.

Interpretation of Art. 29 sec. 2 does not present any special difficulties. It aims to protect the freedom of individuals or collective bodies to establish and run educational institutions, but only on condition that the principles set out in Art. 29 sec. 1 of the Convention on the Rights of the Child. Moreover, education in these types of institutions must comply with the minimum standards that will be determined by the given country.

Conclusions

Article 28 of the Convention on the Rights of the Child gives the child the right to education directly³⁵. Following this, it is also the right of access to knowledge. These regulations are based on the so-called Geneva Declaration of which they are an extension. On the other hand, Art. 29 of the Convention on the Rights of the Child relates to the aims of education for which all States parties have agreed. Moreover, it promotes, supports and protects the most important values of the Convention, such as the inherent dignity of human and his inalienable and equal rights. It also gives the right to education a qualitative dimension.

³⁴ Ibidem, s. 384.

³⁵ Ibidem.