

The Scope of Activities of Probation Officers Carried Out as Part of Supervision Over Minors in the Light of Legal Provisions

Zakres działań kuratorów sądowych realizowanych w ramach nadzorów jako samoistnych środków wychowawczych nad nieletnimi w świetle przepisów prawnych

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Abstract: Criminality and demoralization of minors raise social anxiety in many circles. The institution of the probation officer provides a legal and procedural remedy for these problems. Recently, new solutions have been introduced in Polish law to regulate juvenile proceedings. The aim of the article is to outline the scope of probation officers' activities against minors. The article presents a statistical picture of juvenile demoralization and delinquency. In order to achieve the set goal, the method of literature and legal regulations analysis (desk research), as well as the analysis of statistical data have been used.

It has been found that the scale of juvenile delinquency has a decreasing tendency. The scope of tasks of court-appointed family probation officers is complementary.

Keywords: juveniles, demoralization, delinquency, probation officer, social rehabilitation

Abstrakt: Przystępczość i demoralizacja nieletnich budzi niepokój społeczny wielu środowisk. Prawnym i czynnościowym remedium na to zjawisko jest instytucja kuratora sądowego. W ostatnim czasie w polskim prawie wprowadzono nowe regulacje postępowania wobec nieletnich. Celem artykułu jest opis zakresu działań kuratorów sądowych wobec nieletnich w świetle obowiązujących przepisów prawnych. Przedstawiono statystyczny obraz demoralizacji i przestępczości nieletnich oraz zakres działań kuratorów. Posłużono się metodą analizy literatury i przepisów prawnych (desk research), oraz analizą danych statystycznych. Okazało się, że skala przestępczości nieletnich ma tendencję malejącą, a zadania kuratorów sądowych charakter komplementarny.

Słowa kluczowe: nieletni, demoralizacja, przestępczość, kurator, resocjalizacja



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INTRODUCTION

Juvenile court probation has a long history. The first practices in this area were introduced in the 18th century in Anglo-Saxon countries and in the United States and they were based on the common law. With time, as social problems resulting from negative activities of children and youth were noted, probation solutions were also introduced in European countries. In Poland, social rehabilitation in an open environment was implemented right after the establishment of the first juvenile courts after the country regained its independence in 1918. Since then, a number of legislative and methodological changes have been introduced relating to the function of court-appointed family probation officers. Elementary tasks for probation officers are defined in the Act of 27 July 2001 on probation officers (Dz. U. 2023 poz. 27) as having educational and social rehabilitation, diagnostic, preventive and control character and indicating that these tasks are carried out only based on court rulings.

In cases related to juvenile offenders and demoralized juveniles, probation officers referred also to the Act of October 26, 1982 on proceedings in juvenile cases (Dz. U. 2018 poz. 969). Currently, this act, which had been in force for the last forty years, was replaced with the new Act of June 9, 2022 on the support and rehabilitation of minors (Dz. U. 2022 poz. 1700) introducing a number of new solutions concerning proceedings in juvenile cases. In addition to changes in legal regulations, the act has also introduced the Regulation of the Minister of Justice of November 28, 2022 on the supervision of minors by probation officers, social organizations, employers and trustworthy persons (Dz. U. 2022 poz. 2544).

The legislator introduced slight modifications to the definition of the minor, defining the minor as an individual who:

- is over 10 years of age, but is not an adult and exhibits behaviours indicating demoralization,
- is over 13 and under 17 years of age and has committed a punishable act,
- against whom educational, therapeutic or corrective measures were carried out or adjudicated before the age of 21.

The applicable law specifies the lower age limit minors, i.e., 10 years of age, which has not been defined so far. Thus, it has been indicated from what age the provisions of the Act (Dz. U. 2022, poz. 1700) apply and, consequently, children under 10 years of age displaying demoralizing behaviour are not subject to legal responsibility. The lower age limit is a novelty in the current legal status.

An analysis of the phenomenon of juvenile delinquency and demoralization inevitably leads to ambivalent perception of the role of minors. On the one hand, the minor is an individual perceived as an actor of destructive behaviours of an individual and social nature. On the other hand, it should be noted that a minor who comes into conflict with the law is also a victim, because criminal behaviour is the result of harm and abuse (Mwangangi 2019, 58).

The emerging problems concerning juvenile delinquent and demoralized individuals are addressed by solutions proposed in the Act on the support and social rehabilitation of minors (Dz. U. 2022 poz. 1700). It is already in the preamble that the legislator indicates family as the natural environment for human development and gives primacy to parents in passing on the values and principles of social coexistence. This provision indicates that placing juvenile delinquents in solitary confinement is the last resort implemented only when other educational measures prove to be insufficient. Supervision of the probation officer falls into the scope of those other educational measures.

As the wording of current legal provisions raise many controversies and thus require exhaustive interpretations, it is justified to make an analysis of these provisions. In addition, the quantitative picture of demoralization and juvenile delinquency is constantly fluctuating, therefore it also seems justified to present the scale of the phenomenon.

In view of the above, the aim of the article is to outline the scope of probation officers' activities carried out as part of the supervision over minors as independent educational measures in the light of applicable law. The article provides an analysis of literature regarding the subject of probation supervision in juvenile cases as well as legal acts regarding juvenile proceedings, focusing on the implementation of probation supervision as an independent educational measure. The article focuses on the following research problems: What is the quantitative picture of juvenile demoralization and delinquency, and what is the number of adjudicated probation supervisions in juvenile cases? What are the tasks of probation officers based on the applicable legal provisions and what are their characteristics?

The conducted research was based on the desk research method and embraced an analysis of relevant legal acts, literature and statistical data. For this purpose, non-reactive data in the form of statistical materials obtained from the Ministry of Justice were used.

1. COURT PROBATION AS AN INDEPENDENT EDUCATIONAL MEASURE ADJUDICATED IN CONNECTION WITH JUVENILE DELINQUENCY AND DEMORALISATION – EXPLANATION OF TERMS AND A QUANTITATIVE PICTURE

Supervision by the probation officer is one of the corrective measures adjudicated in juvenile cases (Dz. U. 2022, poz. 1700, art. 7). A characteristic feature of this measure is individualized profiling of activities towards probationers. Supervision is characterized by a high degree of subordination and the instructions given under this measure are binding for the probationer (Garwal 2023, 594).

The table below presents the numerical and percentage data on measures adjudicated in the form of supervision over minors by probation officers, broken down by gender.

Table 1. Number of adjudicated educational measures in the form of supervision by the probation officer in 2018-2020.

Year	Boys		Girls		Total
	N	%	N	%	
2018	6189	68,5	2842	31,5	9031
2019	5864	68,3	2726	31,7	8590
2020	4304	67,9	2031	32,1	6336

Source: Statistical data of the Ministry of Justice: <https://isws.ms.gov.pl/pl/baza-statystyczna/raporty-i-publicystyka>, accessed: 21.02.2023. Own calculations.

As can be seen from the data presented in Table 1, the number of juveniles against whom courts adjudicate corrective measures is systematically decreasing. The share of boys and girls in the total number of adjudicated supervisions remained at a similar level over the analysed years.

Probationers are demoralized individuals. Simple semantics allows to assume that demoralization indicates an individual's deviation from the generally adopted moral norms. This, in turn, implies that the state of demoralization may only refer to those individuals who were previously guided by moral norms, and that those norms were internalized by them. However, in the process of development, at some point in life, such individuals ceased to observe moral norms, and started trespassing on moral, social or legal principles. Thus, socially maladjusted individuals who under the law are defendants and at the same time have the status of juveniles can hardly be considered demoralized in the light of the above definition. It is because, according to research reports (Peterman 2019, 58-70), juveniles most often come from pathological family environments in which the level of morals differs from socially accepted norms. Consequently, children brought up in such environments did not have the opportunity to achieve a high level of morals. It should therefore be noted that the very connotation of the word "demoralization" prevents the use of this term in the context of the Act on the support and social rehabilitation of minors (Dz. U. 2022, poz. 1700). Nevertheless, the act in question lists circumstances signalling demoralization without specifying their precise nature. The legislator lists the following: commitment of a prohibited act, use of alcoholic beverages and drugs, including other psychotropic substances, evasion of school or learning obligation, violation of the rules of social coexistence. While consumption of alcohol and drugs, as well as evasion of school duties are evident indicators of violating norms, violation of the rules of social coexistence can raise many doubts.

The scale of the phenomenon of juvenile delinquency and demoralization is illustrated by statistical data recorded by the Ministry of Justice.

Table 2. The scale of demoralization of minors in 2018-2020.

Year	Boys		Girls		Total
	N	%	N	%	
2018	9655	66,9	4759	33,1	14414
2019	9277	67,2	4528	32,8	13805
2020	6622	65,0	3565	35,0	10187

Source: Statistical data of the Ministry of Justice, <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletni/> accessed: 21/01/2023. Own calculations.

Table 2 indicates that the scale of the phenomenon of juvenile demoralization in the period from 2018 to 2020 shows a downward trend. It turns out that boys much more often manifest demoralizing behaviours than girls. An analysis of the percentage share of individual groups broken down by gender shows that while the activity of boys has decreased, that of girls has increased.

Particular attention is due to the term “crime” used with reference to minors. The concept of crime is invariably associated with violation of the legal provisions in force. Therefore, the term “crime” refers to acts that stand in opposition to normative regulations protecting goods such as life, health and property. Regardless of the form of criminal activity, this phenomenon is viewed as negative both in social and individual aspect. Crime is an unlawful act that can only be committed by a human being, i.e., an individual with free will. Crime is either felony or misdemeanour, i.e., acts prohibited under penalty by the applicable law (Dz. U. z 2022 r. poz. 2600, art. 7 par. 1).

It should be emphasized that, according to the legal doctrine, juveniles do not commit crimes, but only punishable acts, including both delinquency, offence, and fiscal offence.

Table 3. The scale of criminal acts from 2018 to 2020.

Year	Boys		Girls		Total
	N	%	N	%	
2018	7491	76,8	2263	23,2	9754
2019	6681	74,9	2239	25,1	8920
2020	5243	74,7	1772	25,3	7015

Source: Statistical data of the Ministry of Justice, <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletni/> accessed on: 21/01/2023. Own calculations.

An analysis of the data presented in Table 3 shows that, as in the case of registered number of demoralized minors, the total number of detected punishable acts is decreasing. The percentage share broken down by gender also remains at a similar level in the analysed period. However, the fact that the share of girls

shows a slightly increasing trend is a matter of concern. Statistical data from a decade ago show that criminal activity of girls was, on average, at the level of 13% of all criminal acts, while now their share has doubled.

2. CHARACTERISTICS OF THE SCOPE OF PROBATION OFFICERS' ACTIVITIES UNDERTAKEN WITHIN SUPERVISION OF MINORS

Probation officers as an institution are an auxiliary body of the court and, therefore, they are obliged to perform orders issued by the court. Probation officers take part in examination proceedings in juvenile cases as well as in enforcement proceedings. In examination proceedings, probation officers most often are assigned the task of conducting community interviews that provide the grounds for the court decision on the case and adjudication of temporary supervision (Dz. U. 2022, poz. 1700, art. 44). A much broader scope of tasks is addressed to probation officers in the course of enforcement proceedings in juvenile cases. In these proceedings, the probation officer may exert supervision over the minor as an independent educational measure, the probation officer may also control the performance of other educational measures imposed by the court on the minor or organize and control the performance of social work to which the minor was obliged by the court. In addition, the supervision by the probation officer is ordered as a probationary measure in the event of conditional release from a reformatory, conditional withdrawal from the implementation of a corrective measure (Dz. U. 2022, poz. 1700, art. 235), or temporary suspension of the implementation of a corrective measure.

In juvenile cases, the overriding goal of probation work is the welfare of the minor. Consequently, the question arises about the meaning of the term "welfare of minor". There is no definition of welfare in Polish law. Bearing in mind that juveniles most often grow up in biological or foster family environments, it seems reasonable to consider the welfare of the minor as the welfare of the child on the basis of family law, where the welfare of the child is the key principle. Polish Constitution (Dz. U. 1997, nr 78, poz. 483 z późn. zm.) regulates the general principle of the best interest of the child, which implies that children are legally protected against violence, exploitation and demoralization. Based on this provision, as well as on the preamble to the Act on the support and social rehabilitation of minors (Dz. U. 2022 poz. 1700), it should be noted that the basic task of the probation officer supervising a minor consists in providing support both to the minor and to the minor's family.

It is a truism to say that juvenile defendants are demoralized individuals, therefore the fact that the legislator imposed on probation officers the obligation to organize and conduct activities aimed at helping minors to change their reprehensible behaviours and attitudes into attitudes considered desirable in society (Dz. U. 2022 poz. 1700, art. 155), does not raise any doubts. Pursuant to the Act of 27 July 2001 on probation officers (Dz. U. 2023, poz. 17), corrective measures undertaken towards juvenile defendants may take the form of educational and social rehabili-

tation, diagnostic, preventive or control actions. Different categories of probation officers' actions towards probationers have been specified the Act of June 9, 2022 on the support and rehabilitation of minors (Dz. U. 2022, poz. 1700, art. 155) and these are organizational, supervisory and control activities.

Table 4. Division of activities and tasks of probation officers

Character of family probation officers' activities	Tasks of family probation officers
organizational	diagnosing
supervisory	social education, social rehabilitation, prevention
control	controlling

Source: own study.

As Paweł Kobes notes, the widest scope of probation officers' activities within the supervision of minors comprises tasks related to social education, social rehabilitation and prevention. However, to enhance the effectiveness of tasks aimed at social education, social rehabilitation and prevention, probation officers are obliged to undertake diagnostic and control activities (Kobes 2019, 43). The legislator clearly distinguishes between supervision and control exercised over the minor (Dz. U. 2022, poz. 1700, art. 155). Conceptually, supervision means a broader set of activities and is characterized by a higher degree of subordination of the individual over whom it is exercised compared to control (Garwal 2023, 594). In addition, supervision involves taking responsibility for the probationer. On the other hand, control refers to checking the fulfilment of commissioned tasks in terms of their quantity and quality. The legislator specified a catalogue of probation officers' activities falling into the scope of supervision (Dz. U. 2022, poz. 1700, art. 155). This list allows for a flexible approach in work with probationers and helps categorize this work into three areas of activity.

The first area comprises organizational activities under which the probation officer is obliged to get acquainted with information about the minor, in particular with the case files. (Dz. U. 2022, poz. 2544, par. 7) The next step with a defined deadline is to establish and maintain contact with the minor, his/her family and the environment with which the minor is associated. The non-family environment includes, among others, the school attended by the minor or the minor's employer. The probation officer is obliged to establish the first contact with the minor within 7 days from the date of being entrusted with such supervision (Dz. U. 2022, poz. 2544, par. 4). Implementation of this task requires the probation officer to visit the minor's place of residence. During the first contact, the probation officer initiates a diagnostic process based on an interview and conversation with the minor and people from his/her environment. The probation officer's task is to recognize and diagnose the minor's personal and environmental situation. The diagnostic scope includes health and developmental aspects of the minor, as well as environmental aspects relating to the profiles of parents and siblings, material and living as well as cultural and psycho-pedagogical situation. If educational measures have been previously adjudicated against the minor, the probation officer has to determine

the degree of his/her social rehabilitation and educational effectiveness. On this basis, the probation officer develops a plan of social rehabilitation work, aiming at specific educational and social rehabilitation goals and adopting a specific model of work for each individual case. It is assumed that planned activities must be modified due to inaccurate initial diagnosis, or the dynamics of family life.

A novelty in establishing contacts with the minor and his/her family is the possibility of obtaining mobile phone numbers and e-mail addresses, which may optionally help the probation officer to establish contact with the probationer and his/her legal guardians (Dz. U. 2022, poz. 2544, par. 4).

The initial organizational activities provide a starting point for the next stage of supervisory activities, which include measures aimed at social education, social rehabilitation and prevention. This area of activities includes prevention, rehabilitation of the minor and supporting his/her social education and providing him/her with support in life matters or with psychological assistance, but also strengthening his/her relationships with the closest community (Kujan 2021, 26). By strengthening the educational and social rehabilitation impact, the probation officer maintains contact with the minor and helps him/her solve the existing and emerging problems. For this purpose, the probation officer provides assistance to minors in the form of educational and therapeutic advice. Thus, the probation officer acts as an initiator of the probationer's activity. The provisions of the law indicate that educational and social rehabilitation measures undertaken by the probation officer must be consistent with the moral values defining the parents of a minor, because it is the parents whom the legislator granted the primacy in passing on values, necessary models of behaviour and moral principles (Dz. U. 2022, poz. 1700).

To enhance the effectiveness of his/her influence, the probation officer establishes contact with institutions and organizations whose legal and statutory objectives have been dedicated to people in need of material, legal, pedagogical and psychological support. Therefore, the probation officer, for the benefit of the minor, is obliged to cooperate mainly with social workers and family assistants, as well as district police officers competent for the minor's area of residence. The research conducted by A. Gąsińska indicates that probation officers cooperating with aid institutions have noticed a significant change in the family situation of minors under their care (Gąsińska 2017, 286)

According to the law, the role of probation officers consists in control and social rehabilitation. However, taking into account all activities undertaken by this professional and social group, it must be noted that a high proportion of them are preventive activities, since probation officers affect the entire environment of the probationer's family (Zinkiewicz 2018, 58).

The last area are control activities preceded by the imposition of specific tasks on the minor. The obligations may be assigned by the court in enforcement proceedings or a probation officer exercising supervision. An example of obligations imposed on the minor by the court, but also by the probation officer, is the

fulfilment of obligations arising from compulsory education. Therefore, as part of supervision, the probation officer is obliged to periodically check the minor's fulfilment of obligations. The control also applies to the behaviour of the minor in his/her place of residence and place of education or work.

CONCLUSIONS

The statistical data regarding supervision over minors assigned to probation officers as well as the scale of registered juvenile demoralization and delinquency of may give grounds for optimism, as it has shown a downward trend over the last several years. However, this trend lacks objective justification because its key reasons are still not known. And this is where the area for further research emerges. The decrease in the number of demoralized juveniles, as well as juvenile perpetrators of punishable acts, clearly translates into the workload of probation officers, because the number of adjudicated supervisions as independent educational measures carried out by probation officers has also significantly decreased. Therefore, it can be concluded that the amount of work of probation officers is decreasing.

The tasks of family probation officers and the scope of their activities are specified in the Act on probation officers (Dz. U. 2023 poz. 27) and in the Act on the support and rehabilitation of minors (Dz. U.2022, poz. 1700) respectively. It should be noted that both of these acts are complementary as regards the analysed aspect. Precise indications of activity for probation officers are provided in the Regulation of the Minister of Justice of November 28, 2022 on the supervision of minors by probation officers, social organizations, employers and trustworthy persons (Dz. U. 2022, poz. 2544). The analysis of the indicated legal acts made it possible to determine in detail the scope of activities undertaken by probation officers and covering organizational, supervisory and control areas, and by analogy, tasks in the area of prevention, control, and social educational and social rehabilitation. Taking into account the overall meaning of probation officers' work and the resulting goal of education and social rehabilitation, educational and social rehabilitation tasks appear to provide the axis of probation officers' activity. However, the analyses show that without the initial measures such as diagnosis and the associated control and prevention, those fundamental goals could not be achieved.

This elaboration addresses only a small part of the research problem and should be treated only as a contribution to further study. The search for answers to the research problems posed in the environment of probation officers and in the group of minors under the supervision of probation officers will allow to obtain a broader, in-depth research context.

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