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## The probation officer in view of a socialised social rehabilitation system

**Abstract:** The article shows a jurisdictional- correctional model of the functioning of the Polish probation system, despite the fact that on its foundation in 1919 and in the current attempts to improve it we emphasize primarily its social rehabilitation and protection functions, the implementation of which should be embedded in the environment of the probationer, while all social forces are used forming this environment. Hence the postulated in this article need for communalization and integration of the actions of probation officers with various components of social participation environments of probationers.

**Key words:** Probation, social rehabilitation and protective functions of probation, socialization, communalization, integration of probation actions.

The establishment of court probation in Poland in 1919 and the concept of its functioning was in line, from the very beginning, with the model of probation already implemented in England and the United States, stemming from the tradition of caring activities most often undertaken by spontaneous leaders of local communities, aimed at protecting potential or already derailed criminals from further demoralisation and, consequently, from their inevitable social exclusion. Juveniles, as future adult members of local communities, who will inevitably determine their future shape and development, were primarily covered by these types of interactions. This probably was the reason why in the history of court probation in Poland the concept of “court guardians” of juveniles

was born, who, by virtue of the Decree of the Head of State Józef Piłsudski of 7 February 1919, were initially appointed at special magistrate's juvenile courts in Warsaw, Łódź and Lublin. Having special qualifications, they were to exercise supervision over juveniles as ordered by a judge acting in accordance with the instructions issued by the Minister of Justice on this subject. The same Decree also provided for the possibility of establishing special chambers at juvenile courts for juveniles whose release would be inadvisable and who were to remain there under the supervision of a court guardian (*Dziennik Praw Państwa Polskiego [Journal of Laws of the Polish State]* No. 14/1919, item 171). The institution of the aforementioned guardians became finally established in the Polish tradition of interwar juvenile courts in 1929 under the name of court probation (*Journal of Laws of 1929*, No. 47, item 387), whose Polish name 'kuratela sądowa' was derived from the medieval Latin term *curatela*, which in dictionary terms meant 'caring for souls'. Adult probation was established in Polish law much later, in 1958, as a consequence of the enactment of the Parole Act, in the light of which probation officers, as a social auxiliary body of the court, were obliged to exercise supervision over individuals subjected to this type of probation (Buchmat 2010, p. 24). This way the institution of court probation established at the dawn of the Second Republic of Poland, initially exclusively for juveniles, and much later also for adults, transformed from a fully statist service, through social and socio-occupational service, to the finally established model of professional and social service operating under the Act of 27 July 2001. The fact that although at the beginning of its existence, Polish court probation was based on a personalised care clearly derived from the model of social work, with time it took on the form of actions controlling court decisions and sanctioning any manifestation of their disobedience by the person sentenced and under probation, is undoubtedly worth emphasising. It was not a coincidence that this tendency was criticized by the authors of the first textbook on social rehabilitation pedagogy in Poland, i.e. Czesław Czapów and Stanisław Jedlewski, published in 1971, where they pointed to the necessity of using both traditional casework principles and absolute control of the ward's behaviour in probation activities. According to these Authors, only systematic control and simultaneous activating care, inspired and coordinated by a probation officer, as well as actions undertaken in parallel by various entities operating in the environment of social participation of wards, give court probation its proper meaning (Czapów, Jedlewski 1971, pp. 471–475; cf. also Tyszk 1963). Unfortunately, this model, which makes the probation officer a person who inspires and integrates the local community with appropriate care activities and activates them to take on appropriate roles in line with social expectations, never came to fruition even though it seemed that the political transformation taking place in Poland after 1989 would lead, among other things, to a much more horizontal organisation of our prevention and social rehabilitation system, and in particular, to the separation, as in many advanced democracies, of penal

sanctions from social rehabilitation activities and, as a consequence, to the elimination of legal and corrective vision prevailing in them. It is related to the rather archaic, and no longer compatible with modern pedagogical concepts of social rehabilitation, vision of criminal punishment associated with the criticized behavioural approach, which reduces the essence of corrective actions to socialising the consciousness and attitudes of criminals in isolation from the realities of social life and most often in complete social isolation. This principle refers both to social rehabilitation interactions carried out in closed institutions and facilities, as well as to probation carried out in non-detention setting, or to activities undertaken on the level created by administrative mode and equally isolated social groups and educational and therapeutic activities (community centres, various therapeutic centres, probation work centres, etc.). This orientation is accompanied by the belief that the consciousness and attitudes of socially derailed individuals, formed in conditions of social isolation, will in the future be transferred to any other life situations, including those that will accompany them already in independent – without the control of social rehabilitation institutions – life after release (Kowalski 1973, pp. 237–243). The symbiosis of criminological and extremely psychological orientations achieved in such a way must have resulted in the undertaken social rehabilitation activities being focused to a significantly greater extent on controlling and sanctioning the behaviour of socially derailed individuals than on extensive forms of care and therapeutic activities, supporting and assisting them to accepted social participation. This state of affairs seems to still continue today, despite the reform of criminal law carried out in 1997, and in particular the Act on the System of Common Courts and the Act on Probation Officers adopted in 2001, where the tasks of probation officers are clearly defined as educational and social rehabilitation, diagnostic, preventive and control tasks (Jedynak 2008, p. 65; Liszke 2008, p. 207). The statutory tasks of probation officers listed in this order were undoubtedly aimed at rebuilding the current model of court probation focused mainly on control, sanctioning and corrective functions. Unfortunately, this did not happen, and it will probably take a long time for the service to reach the Anglo-Saxon probation model, which is primarily focused on: 1) care and social rehabilitation functions, preceded by an in-depth diagnosis estimating the risk of further derailment of a ward and the resulting plan of probation or supervision, and finally on appropriate measures supporting and assisting an individual and activating and organising appropriate community forces for the implementation of those measures, 2) monitoring and controlling wards, subordinate to individualised care and educational or supportive and empowering interactions, activating socially acceptable conduct, which cannot in any way be reduced to a repressive form of probation supervision aimed solely at protecting the social order, 3) law and accompanying sanctions enforcement as a last resort in the situation of persistent failure to submit to care and social rehabilitation interventions (Paparozzi, Demichelle 2010).

Such a vision of court probation should also be accompanied by appropriate measures aimed at changing the community's attitude towards individuals under probation or supervision. Society, especially local communities, must in some sense also adapt to the problems of derailed people or more broadly – to marginalised people, more or less socially excluded, who struggle with finding themselves in the dynamically changing conditions of social life and are unable to adapt to living in post-modern society. This is generally the problem of many contemporary societies today, which being inundated with a rising tide of marginalisation and social exclusion, as well as the phenomena of social pathology (sociopathology) and pathology of public life, most often “entrench” against such threats, creating strictly separated systems of social assistance and social rehabilitation, instead of reorganising themselves in accordance with the idea of civil society in perceiving these phenomena and solving them (Wnuk-Lipiński 2005, pp. 270–297). The idea is to create, in accordance with the concept of social reconstruction, “completely new patterns of behaviour, new norms of conduct [...], new institutions that will replace or modify the old and will better suit changed attitudes”, thus stopping the processes of its disorganisation and at the same time „creating new areas of social cooperation” (Thomas, Znaniecki 1976, p. 111).

The daily practice of probation proceedings does not yet seem to follow the functions outlined in the current Act. The reason behind this is that when implementing the probation measures – which evolved in opposition to criminalisation concepts based primarily on criminal punishment – care was not taken to make them a real alternative to the existing system of penalties, and especially to the isolation punishment predominant therein, while this way of dealing with many, especially petty criminals, brings no result, and often even further exacerbates their derailment and social degradation. Neither was a separate service created nor separated from the already existing ones, to which clearly defined tasks of probation proceedings would be assigned, and this whole peculiar trend of social rehabilitation interactions was embedded into the already existing criminalisation structures, functioning mainly on the basis of legal visions of social rehabilitation. In this way, the whole idea of probation procedure was unfortunately assigned to a fairly conservative probation service, which is neither mentally nor organisationally prepared to perform educational and social rehabilitation, diagnostic, preventive and control tasks indicated in the Act. This is confirmed by a textbook – otherwise excellent, written by eminent probation officers – on the probation officer's work methodology (Stasiak 2018, p. 897), which, however, focuses primarily on procedures (tasks, modes, organisation, duties, rules of conduct, specimen application forms, rights of wards, etc.) for appropriate supervision exercised by adults and family probation officers, at the same time clearly marginalising contents relating to the methods and techniques of diagnostic proceeding and methods of adequate preventive and care or educational and social rehabilitation interactions. Although the textbook has

been published in as many as four editions, almost doubling its volume in the last edition, the percentage of content describing specific methods of probation diagnostic proceedings or proven methods of care and social rehabilitation reaches just over 8% of its volume, presenting quite outdated content in this respect. This is undoubtedly an important shortcoming of this textbook, especially since in the course of teaching, psychological or sociological studies, which are required from candidates for the probation service, students unfortunately do not receive detailed methodological preparation for probation work. By their very nature, higher education is universal in nature, while detailed professional or specialist preparation takes place generally after graduation, either directly in the profession or in the area of its specialisation. This is also the case with probation service, the performance of which requires the completion of relevant training, giving full authorisation to practice the profession. Unfortunately, its curriculum is also filled mainly with various legal and organizational procedures, while the contents concerning the methodology of probation diagnostic or educational and social rehabilitation proceedings are reduced to an incomprehensible minimum (Jedynak, Stasiak 2008, pp. 215–228). This situation is further exacerbated by a real lack on the publishing market of methodological papers (textbooks, guidebooks, etc.) on probation proceedings in adult and juvenile cases, outlined in terms of both pre- and post-penitentiary interactions. All this, taken together, undoubtedly means that the implementation of the tasks of court probation, clearly defined in the current Act, will for a long time to come be based on the current repressive and educational, extremely behavioural concept of social rehabilitation proceedings. In order to avoid this and implement the tasks outlined in the Act into the daily practice of probation proceedings, it is not enough to be satisfied with the fact that it has been prepared and carried out throughout the entire legislative process, but it should also be implemented with the equally active participation of the already numerous professional community of probation officers, creating and disseminating methods of probation work that are appropriate to the needs and based on contemporary concepts of prevention and social rehabilitation. It is the community of probation officers, and especially those of its representatives who have many years of experience and unquestionable practical achievements, should create and implement into everyday probation practice such a methodological basis, corresponding to the canons of modern pedagogy in general and of rehabilitation pedagogy, and on this basis prepare a program of probation training corresponding to the statutory assumptions and the entire system of education and vocational training of active probation officers, together with relevant textbooks and methodological guidebooks.

The mere fact that the Act referred to herein clearly departs from the model of control and corrective actions in favour of individualised educational, care, social rehabilitation and diagnostic work, and thus refers directly to the concepts of probation already developed in the world, does not mean that the current

structure and functioning of Polish probation service and its place in the entire system of prevention and social rehabilitation fully guarantees that the functions assigned to it will be fully achieved. The time elapsed since the establishment of the Act referred to herein seems to confirm this, indicating that the nature of supervision exercised by probation officers has not changed in principle. Undoubtedly, the process of drafting the Act and its subsequent implementation significantly mobilised and integrated the communities of probation officers and strengthened their position in the justice system, as well as led to a significant increase in the number of posts within the service and the establishment of its professional and social model. This Act led also to the regulation of the number of supervisions per probation officers and social workers and secured basic organisational, material and employee, and training needs, as well as to the creation of appropriate structures of probation officers self-government, granting it the powers essential to the service.

However, the concept of court probation and the model of individualised educational and social rehabilitation, diagnostic and preventive work implemented within it remains an undoubted problem. The vision of a lonely probation officer, who usually follows vaguely specified court's recommendations regarding the imposed supervision of a ward, who usually presents very complex psychosocial and pedagogical problems and is often subject to many years of social derailment, while being entangled in the criminal environment and subculture, is not able to apply any social rehabilitation measures other than the instrument of control and sanctioning activities, which usually have little effect. Therefore, providing no appropriate support for probation officers' work from relevant social forces (institutions and local support groups), while maintaining the integrative and coordinating role of probation officers, does not guarantee the expected effectiveness or efficiency of this service in the area of social rehabilitation functions assigned to it. At the turn of the 60s and 70s of the last century, the authors of the first Polish textbook on the social rehabilitation pedagogy, Cz. Czapów and S. Jedlewski, as well as the authors of the then conducted research (Czapów, Jedlewski 1971; Tyszka 1963) on court probation, referring to its existing model, pointed to the necessity of placing the work of a probation officer with a derailed individual in the realities of community of the latter and launching therein integrated, institutional care and support, educational and social rehabilitation activities, or those activating professionally to acceptable social participation. The years that have passed since the emergence of such a model of Polish court probation have unfortunately not only failed to bring it closer to such a vision of its functioning, but, like the other subjects of the system of prevention and social rehabilitation in operation, they have isolated themselves even more from the widely perceived system of education despite the fact that they were to play a kind of self-regulatory role in it, restoring socially derailed individuals and groups to accepted social participation. All of this makes us

increasingly often point, when analysing the condition of the system of prevention and social rehabilitation, to the need to “socialise” the system, or even to re-socialise it, understood in this case not as primary (through socialisation) or repeated (through social rehabilitation) “making of” an individual, but as „making individual behaviours responsible for the emergence of cultural patterns and institutions community-oriented” (Marody, Giza-Poleszczuk 2004, p. 59). Referring it to the idea of socialising the system of prevention and social rehabilitation, and in particular of socialising the activities of probation service, we primarily mean standardising and consolidating the care and educational, as well as corrective and control interactions developed on the basis of contemporary concepts of social rehabilitation, as well as making the activities undertaken by probation officers towards their wards community-oriented and integrating them with those of other entities of the system referred to herein. Only in such a way will it be possible to overcome the peculiar blockage of probation service in the not very effective – as it has been confirmed by numerous studies – juristic and behavioural concepts of social rehabilitation, which most often take place in isolation from other influences of communities in which wards function, and especially from the influence of the groups and institutions that make up the local dimension of the upbringing society in which the wards’ everyday lives take place. Thus, in order to socialise contemporary Polish probation service, and thus improve its further functioning, we should first of all lead to the following:

1. Introducing to curricula of probation training and routine training courses improving probation officers’ substantive and methodical competences contents containing both knowledge of contemporary theories explaining the essence, manifestations and sources of deviant and criminal behaviours, as well as the concepts of social prevention and social rehabilitation that emerge from them, determining the shape and functioning of probation services and the methods of interactions they apply.
2. Developing appropriate methods of diagnosing socially and criminally derailed individuals, both for the purposes of judicial decisions and community-oriented probation proceedings integrated with the activities of other entities.
3. Adequate responding, according to the needs of a ward, using appropriate care, prevention, compensating, empowering, supporting, social rehabilitation, readaptation, etc. measures by probation officers themselves, or by the relevant actors of the local prevention and social rehabilitation system, while maintaining the coordinating role of probation officers as initiators of such measures towards their wards.
4. Integrating the activities of various local actors by involving them in the proper information flow about the wards and the activities undertaken towards them, but also by taking joint initiatives to overcome the stigmatisation, isolation and alienation of wards from their assigned social roles and the expected activity in the life of basic structures of the local community.

5. Coordinating measures undertaken towards the wards at the level of the local community, resulting from the very essence of the process of social rehabilitation (as well as in relation to the harmonious process of socialisation), treated as a function of the individual's participation in the life of the local community and the social roles he/she performs there.
6. Developing in the current structure of probation service further specialised units taking care of parolees or wards subject to pre-penitentiary interventions (e.g., like the US parole and probation service), or units specialising in taking care of individual categories of wards facing various social problems (e.g. addicts, homeless, unemployed, mentally disturbed, those with various criminal tendencies, etc.).

In the context of the ways of socialising and improving the care and educational, as well as corrective and control functions of the probation service and its functional connection with the system of social prevention and social rehabilitation outlined herein, a question must obviously arise as to its further place in the structure of the justice system as a service which, as a rule, performs pedagogical functions. At the same time, because of its competences, this service – and especially its statist structures – is already able to integrate numerous preventive and post-penitentiary measures undertaken in the area of local communities, which, as we know, is where both the lifelong process of socialisation of individuals and the processes of social criminal derailment that appear in some of them take place. It is also natural that the processes of social rehabilitation of derailed individuals (understood, of course, as a process of re-socialisation) are also updated in the same space, as human life always takes place in some local community. This applies both to those derailed individuals who have been subjected to penitentiary measures and, once they have ceased, who return to their previous or new local community, and to those who are subject to various preventive or social rehabilitation measures in the community they live in.

In the context of so perceived role the probation service could play in local prevention and social rehabilitation systems, the problem is where to place it within the structure of the system of prevention and social rehabilitation in order for it to play the role indicated. This raises the following questions: 1) whether it is possible, given the current place of probation within the judiciary, to increase its impact on court decisions due to the psychopedagogical competences of probation officers, 2) should the need for increasing the autonomy of probation service as a pedagogical service in the broad sense of this word be implemented within the judiciary, or outside it, as a fully independent structure in the justice system (e.g. like a prison service) which, although enforcing court decisions, would operate not on the basis of legal concepts of criminal punishment, often resulting in apparent effects, but on the basis of developed by social sciences concepts of social rehabilitation interactions, each time adjusted to the individual categories



of wards and integrated and coordinated with other activities of local prevention and social rehabilitation system entities. Removing the probation service from the judicial structures and give it a fully autonomous status as a pedagogical social rehabilitation service seems to be the most reasonable solution. It would highlight the competences of this service developed over the years, as well as the strength of this corporation both in structural-organisational and functional terms. Although its continuation in the judiciary structure legitimises the control and corrective activities undertaken by probation officers, giving them a sense of prestige and security, the effects of supervision are very often quite apparent, as they often do not fundamentally change the future of wards, neither do they favour the development of various methods, forms and means of corrective measures, based on contemporary concepts of prevention and social rehabilitation, for which the contemporary probation officers, due to their education and experience, are already fully prepared. It is impossible to form a completely new individual and social identity of a ward, different from the previous one, and thus effectively re-socialise his/her personality through isolated control and sanctioning activities, devoid of multi-entity interactions bringing out and developing their, often numerous, developmental potentials (Konopczyński 2006, p. 111–114). The proposed increase in autonomy of the probation service should therefore also be linked to its powers to integrate and coordinate the activities of various actors, particularly at the level of diverse local communities, for the benefit of the wards who are subject to appropriate probation supervision.

The solutions proposed here would not only crown the century-old achievements of the Polish court probation, which, despite the post-war, long-term restrictions, has developed in line with the trends present in advanced democracy societies, but would also serve the postulated socialisation of this service by making it community-oriented and by integrating its activities with other interactions undertaken in this respect towards the wards, thus giving the court probation its due status in the functioning system of social prevention and social rehabilitation.

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